

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

GOOGLE, INC. \* Civil Docket No.  
\* 2:11-CV-229  
VS. \* Marshall, Texas  
\*  
\* January 21, 2014  
BENEFICIAL INNOVATIONS, INC. \* 12:45 P.M.

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

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12  
13 \*\*\*\*\*

14 P R O C E E D I N G S

15  
16 (Jury out.)

17 COURT SECURITY OFFICER: All rise.

18 THE COURT: Be seated, please.

19 All right. Are the parties ready to  
20 proceed? Is there any reason the Court shouldn't bring  
21 in the jury?

22 Any reason from the Plaintiff?

23 MS. ANDERSON: No, Your Honor. Thank  
24 you.

25 THE COURT: From the Defendant?

1 MR. ADAMS: No, Your Honor.

2 THE COURT: If you'd bring in the jury,  
3 please, Mr. McAteer.

4 COURT SECURITY OFFICER: Yes, sir.  
5 All rise for the jury.

6 (Jury in.)

7 THE COURT: Please be seated.

8 Welcome back, ladies and gentlemen. We  
9 may be technically inaccurate to say ladies, since we  
10 have one lady on the jury, but I'm probably going to say  
11 ladies and gentlemen throughout the trial. You'll have  
12 to forgive me.

13 Thanks for being on time. I have some  
14 preliminary instructions that I want to give you before  
15 we start with opening statement from the attorneys, and  
16 then we'll proceed to hear the evidence.

17 You've now been sworn as the jurors in  
18 the case, and as the jury, you are the sole judges of  
19 the facts. You will decide and determine all the facts  
20 in this case. As the Judge, I will give you  
21 instructions on the law, decide questions of law that  
22 may arise during the trial, and handle matters of  
23 procedure and evidence.

24 I'm responsible for managing the flow of  
25 the trial and maintaining the decorum of the Court. At

1 the end of evidence, I will give you detailed  
2 instructions about the law to apply in deciding this  
3 case, and I will give you a list of questions that you  
4 are then to answer.

5               This list of questions is called the  
6 verdict form. Your answers to those questions will need  
7 to be unanimous, and those answers will constitute the  
8 verdict in this case.

9               I now want to briefly tell you about the  
10 case. This is a civil action centering around a  
11 settlement agreement that the Plaintiff and Defendant  
12 previously entered into. A settlement agreement is an  
13 agreement between persons or corporations to resolve a  
14 dispute. The resolution takes the form of a written  
15 contract, which is legally binding on the parties who  
16 sign the agreement. If a party failed to do something  
17 that the settlement agreement requires it to do or did  
18 something that the settlement agreement -- that the  
19 settlement agreement prohibited it from doing, and the  
20 other party has suffered harm because of the first  
21 party's action, then contract law allows the party who  
22 has suffered the harm to recover money damages.

23               In this case, the Plaintiff, Google,  
24 claims that the Defendant, Beneficial, violated their  
25 settlement agreement and seeks money damages on the

1 basis of that claim. Beneficial denies that it violated  
2 the agreement and denies that Google is entitled to any  
3 award of money damages.

4           While this case is about a contract  
5 dispute, several underlying issues that you will need to  
6 decide relate to two United States patents and are  
7 governed by patent law. I know that you've seen the  
8 patent film, but I want to give you some additional  
9 instruction about a patent and how one is obtained.

10           Patents are granted or denied by the  
11 United States Patent and Trademark Office, which I will  
12 often call simply the PTO. A valid United States patent  
13 gives the holder the right, for up to 20 years from the  
14 date the patent application was filed, to prevent others  
15 from making, using, offering to sell, or selling the  
16 patented invention within the United States or from  
17 importing it into the United States without the patent  
18 holder's permission.

19           A violation of a patent holder's rights  
20 is called infringement. The patent holder may try to  
21 enforce a patent against persons it believes to be  
22 infringers by a lawsuit filed in federal court. The  
23 process of obtaining a patent is called patent  
24 prosecution.

25           To obtain a patent, one must first file

1 an application with the PTO. The PTO is an agency of  
2 the United States government and employs trained  
3 examiners who review applications for patents.

4           And the application includes what's  
5 called a specification, and the specification contains a  
6 written description of the claimed invention telling  
7 what the invention is, how it works, how to make it, and  
8 how to use it. The specification concludes or ends with  
9 one or more numbered sentences. These numbered  
10 sentences are the patent claims.

11           When the patent is eventually granted by  
12 the PTO, the claims define the boundaries of its  
13 protection and give notice to the public of those  
14 boundaries.

15           To help the -- to help you follow the  
16 evidence in the case, I'm now going to give you a  
17 summary of the positions of the parties.

18           The Plaintiff in this case, Google, Inc.,  
19 who I will refer to simply as Google or the Plaintiff,  
20 and the Defendant in this case is Beneficial  
21 Innovations, Inc., who I will also refer to simply as  
22 Beneficial or Defendant, Google and Beneficial entered  
23 into a settlement agreement in 2010 granting Google and  
24 its customers certain rights to practice two of  
25 Beneficial's patents in exchange for the payment of

1 money by Google to Beneficial.

2           In 2011, Beneficial sued a number of  
3 companies for infringing those two patents and some of  
4 those companies were customers of Google. Google  
5 alleges that Beneficial has breached the settlement  
6 agreement by bringing a patent infringement lawsuit  
7 against those Google customers. Google claims that  
8 Beneficial owes it damages as a result of Beneficial's  
9 breach, and to compensate Google for its expenses  
10 resulting from the enforcement of the settlement  
11 agreement.

12           Beneficial denies it has violated the  
13 settlement agreement -- settlement agreement and denies  
14 that Google is entitled to any damages or any other  
15 relief.

16           Your job, ladies and gentlemen, is first  
17 to decide whether Beneficial has violated the settlement  
18 agreement. If you decide that Beneficial has violated  
19 the settlement agreement and Plaintiff, Google, has  
20 suffered harm because of Beneficial's violation, you  
21 will then need to decide what amount of money damages  
22 are to be awarded from Beneficial to Google.

23           Now, my job in this case is to tell you  
24 what the law is, handle the procedure and oversee the  
25 conduct of the trial as efficiently and effectively as

1 possible. In determining the law, it is specifically my  
2 job to determine the meaning of any claim language that  
3 needs interpretation.

4 Claim language -- claim language is the  
5 language in those numbered paragraphs or sentences at  
6 the end of each patent which I identified as the claims.

7 You must accept the meanings that I give  
8 you and use those meanings when you decide whether any  
9 particular claim has or has not been infringed and  
10 whether or not any claim is invalid.

11 For any term for which I have not  
12 provided you with a definition, you should apply the  
13 ordinary meaning. If I provided you with the  
14 definition, however, you are to apply my definitions to  
15 those terms throughout the case.

16 Nonetheless, my interpretation of the  
17 language of the claims should not be taken by you as an  
18 indication that I have a personal opinion or any opinion  
19 at all regarding the issues such as infringement and any  
20 other issues in this lawsuit. Those issues are yours to  
21 decide alone.

22 I'll provide you with more detailed  
23 instructions on the meaning of the claims before you  
24 retire to deliberate and reach your verdict.

25 In deciding the issues that are before



1 you, you'll be asked to consider specific legal rules,  
2 and I'll give you an overview of those rules now, and  
3 I'll give you much more detailed instructions later.

4           Again, the first issue you're going to be  
5 asked to decide is whether Defendant, Beneficial, has  
6 violated the settlement agreement. To prove that  
7 Beneficial has violated the settlement agreement --  
8 settlement agreement, Google must prove that Beneficial  
9 did something that the settlement agreement prohibited  
10 it from doing or failed to do something that the  
11 settlement agreement required it to do.

12           If you decide that Beneficial has  
13 violated the settlement agreement, then you'll need to  
14 decide whether Beneficial's violation caused damages to  
15 Google. And if so, the amount, if any, of those  
16 damages. In assessing damages, you should consider the  
17 amount of money that will put Google in the same  
18 position that it would have been in had Beneficial not  
19 violated the settlement agreement.

20           If you decide that Beneficial has  
21 violated the settlement agreement, but also that Google  
22 was not harmed by the violation, you may still award  
23 Google nominal -- nominal damages such as \$1. I'll give  
24 you more detailed instructions on the calculation of  
25 damages at the conclusion of the evidence.



1 be thinking about while you're listening to the  
2 witnesses in this case -- to each witness.

3           The court reporter in front of me is  
4 taking down everything that is said in the courtroom.  
5 But the written transcription of that will not be ready  
6 for you to use in time when you begin your deliberations  
7 in this case. The transcript is prepared in case there  
8 is an appeal from this Court to a higher court. So that  
9 being the case, you will each have to rely on your  
10 memories of the evidence.

11           In a moment, you're each going to be  
12 given a juror notebook. One of the things in the back  
13 of that notebook is a legal pad full of blank pages that  
14 you can use to take notes on. It's up to each of you to  
15 decide whether or not you want to take notes during the  
16 trial, and if you do, how detailed you want those notes  
17 to be. But remember, those notes are for your own  
18 personal use. You will have to rely on your memory of  
19 the evidence, which is why you should pay close  
20 attention to the testimony of each witness.

21           You should not abandon your own  
22 recollection because somebody else's notes indicate  
23 something different. Your notes are to refresh your  
24 recollection, and that's the only reason you should be  
25 keeping them.

1 I'm now going to ask Mr. McAteer to pass  
2 out these juror notebooks to the members of the jury.  
3 Everybody have a juror notebook?

4 Okay. In those notebooks, you'll see  
5 that there are several things. There are copies of the  
6 patents that we've talked about. There are copies of  
7 the settlement agreement. You'll also find a listing of  
8 the claim terms that relate to the patents. Those are  
9 the words found in the numbered claims I've told you  
10 about before. And then there's a construction column.  
11 That's the definition that the Court has given you to  
12 work with in regard to those particular terms.

13 Also you'll find that you have witness  
14 pages for each witness that may testify in the case, and  
15 those pages contain a photograph of the witness at the  
16 top of the page, along with their name so that you'll  
17 have a point of reference as you recall their testimony  
18 during your deliberations.

19 Those juror notebooks, ladies and  
20 gentlemen, should either be with you in the jury box or  
21 they should be on the table in the jury room. They  
22 should be no other place. There may be times we'll take  
23 a short recess where I'll tell you that you can leave  
24 them in your chairs in the jury box, if you're only  
25 going to be in recess for a few minutes. But as a

1 general rule, they should be either in your hands or on  
2 the table in the jury room when you go home at night.

3 Also as I mentioned, there's a legal pad  
4 in the back for you to take notes on, and you should  
5 find a pen in each of those notebooks as well.

6 Now, if you'll just close those for a  
7 second, you'll have plenty opportunity to come back and  
8 look at those later, but I want to give you my final  
9 instructions before we hear the opening statements from  
10 the attorneys in the case.

11 Each side is going to make an opening  
12 statement in just a moment. You need to understand that  
13 each side's opening statement is not evidence. What the  
14 lawyers tell you is not evidence. It's simply their  
15 explanation of what they hope and expect that the  
16 evidence will show. The evidence in this case is the  
17 sworn testimony of the witnesses, together with the  
18 exhibits which are admitted into evidence for your  
19 consideration. That is the evidence in this case.

20 As the jury in this case, you're going to  
21 be required to apply a burden of proof known as the  
22 preponderance of the evidence.

23 As I mentioned to you during jury  
24 selection, when a party has the burden of any claim or  
25 defense by a preponderance of the evidence, it means

1 that you, the jury, must be persuaded by the credible or  
2 believable evidence that that claim or defense is more  
3 probably true than not true.

4 I'll say that again. More probably true  
5 than not true. Sometimes this is talked about as being  
6 the greater weight and degree of credible testimony.

7 I just gave you the illustration about  
8 the Scales of Justice and the evidence throughout the  
9 trial being placed on those scales, and if they tip even  
10 ever so slightly in the favor -- in favor of the party  
11 having the burden of proof by a preponderance of the  
12 evidence, then that party has met that burden of proof.  
13 So I won't go through that again in detail with you.

14 None of this is to be confused with any  
15 other burden of proof, including beyond a reasonable  
16 doubt, which applies only in a criminal case and will  
17 have no application in this case.

18 Also, ladies and gentlemen, I want to  
19 talk to you briefly about the -- the use of expert  
20 witnesses.

21 When knowledge of a technical subject  
22 matter may be helpful to you as the jury, a person who  
23 has special training and experience in that particular  
24 field -- we refer to them as -- as an expert witness --  
25 is permitted to testify to you about his or her opinions

1 on technical matters.

2           However, you're not required to accept  
3 those opinions at all. It's up to you to decide whether  
4 you believe an expert witness or any witness for that  
5 matter and whether you believe they're correct or  
6 incorrect or whether you want to believe what they say  
7 or don't want to believe what they say.

8           I anticipate that there will be expert  
9 witnesses in support of each side in this case. But  
10 it's up to you to listen to each expert's  
11 qualifications, and when they give an opinion and  
12 explain the basis for that opinion, you'll have to  
13 evaluate what they say, whether you believe it, and what  
14 degree, if any, you want to give weight to that opinion.

15           Also, during the trial, Ladies and  
16 Gentlemen, I anticipate that testimony is going to be  
17 presented to you through what are called depositions.

18           In trials such as this, it's nearly  
19 impossible to get every witness to appear physically in  
20 open court. So lawyers from each side, prior to the  
21 trial, take the deposition of the witnesses.

22           In a deposition, the witness is present.  
23 A court reporter is present. The witness is sworn and  
24 placed under oath just as if he or she were personally  
25 in court. And then the parties ask them questions, they

1 give answers, and that process is recorded and  
2 transcribed.

3           Portions of those video recordings of the  
4 questions may be played back to you as part of the trial  
5 in this case so that you can see the witness and hear  
6 their testimony even though they're not physically here  
7 in Court.

8           That deposition testimony is entitled to  
9 the same consideration, and insofar as possible, is to  
10 be judged as to its credibility, weighed and otherwise  
11 considered by you as the jury in the same way as if the  
12 witness had been present and given their testimony from  
13 the witness stand in open Court.

14           Also, during the trial of this case, it's  
15 possible that the lawyers for one or both sides will  
16 make objections from time to time, and I'll make rulings  
17 on those objections. It's the duty of each attorney on  
18 each side of the case to object if they think the other  
19 side is offering testimony or evidence which is not  
20 proper.

21           Upon allowing the testimony or other  
22 evidence to be introduced over the objection of an  
23 attorney, the Court does not, unless expressly stated,  
24 indicate an opinion as to the weight or effect of such  
25 evidence.



1           As I stated before, you are the sole  
2 judges of the credibility of all the witnesses and the  
3 weight and effect to be given to all the evidence.

4           I do want to compliment the attorneys in  
5 this case, because prior to your selection this morning,  
6 many hours were spent going through the exhibits in this  
7 case and hearing objections as to their admissibility.  
8 And those objections, many of them have been heard, and  
9 the great majority have been dealt with, and that will  
10 save us a lot of time during the presentation of this  
11 trial.

12           Even so it's still possible that there  
13 will be objections made, and if so, I'll rule on them.  
14 But you can consider that if the parties publish or use  
15 before you an exhibit, that the Court has already ruled  
16 on its admissibility.

17           And they'll ask such questions as they  
18 wish to about it to put it in context, but they have  
19 saved us all a lot of time by working with the Court  
20 through those issues in advance of the trial.

21           However, if there's still an objection,  
22 if I sustain the objection to a question, you must  
23 disregard the question entirely, and you may draw no  
24 inference from its wording or speculate about what the  
25 witness would have said if I had permitted them to

1 answer the question.

2           If I overrule an objection, you should  
3 consider the question and the answer just as if no  
4 objection had been made.

5           Now, the law in the United States permits  
6 a judge in federal court to comment to the jury on the  
7 evidence in the case, but such comments are only an  
8 expression of the judge's opinion as to the facts, and  
9 the jury has the freedom to disregard those comments in  
10 their entirety, because as I remind you, again, you are  
11 the sole judges of the facts in this case, the  
12 credibility of each witness, and how much weight to be  
13 given to the testimony. That's your job, not mine.  
14 But as I've indicated to you earlier, despite the fact  
15 the law may allow me to do that, I'm going to try very  
16 hard not to comment on any of the evidence or the  
17 witnesses throughout the trial.

18           We're going to begin with opening  
19 statements in just a few minutes, but before we do that,  
20 I want to give you a brief roadmap of how the trial is  
21 going to be structured.

22           After the opening statements, the  
23 Plaintiff, Google, will present its evidence in support  
24 of its claim that Defendant, Beneficial, has violated or  
25 breached the settlement agreement.

1 Google must persuade you that it is more  
2 likely than not that Beneficial violated the settlement  
3 agreement, that is, by a preponderance of the evidence.

4 Google will also present its evidence on  
5 damages. Then after it has presented its evidence and  
6 Google rests, the Defendant, Beneficial, will put on its  
7 evidence responding to Google's proof regarding  
8 violations of the settlement agreement and regarding  
9 damages.

10 Then once Beneficial has rested, Google  
11 may put on additional evidence responding to  
12 Beneficial's evidence. This is referred to as rebuttal  
13 evidence. The Plaintiff's rebuttal evidence may respond  
14 to any evidence offered by the Defendant.

15 Then once the Plaintiff rests with regard  
16 to their rebuttal case and all the evidence has been  
17 presented, I will give you final instructions. Then the  
18 lawyers will present -- present their closing arguments.

19 And after that, you will retire to the  
20 jury room to deliberate upon and reach your verdict in  
21 this case.

22 To repeat my earlier instruction, you are  
23 not to discuss this case among yourselves during the  
24 trial. Only when all the evidence has been heard and I  
25 instruct you to retire to the jury room to deliberate on

1 your verdict, then and only then may you discuss the  
2 case among yourselves.

3 All right. I'll call for announcements  
4 at this time. In the case of Google versus Beneficial,  
5 Case No. 2:11-CV-229, what says the Plaintiff?

6 MR. JONES: We're ready to proceed, Your  
7 Honor.

8 THE COURT: What says the Defendant?

9 MR. RAMBIN: Ready -- excuse me -- ready  
10 to proceed, Your Honor.

11 THE COURT: All right. Counsel, if you  
12 have witnesses who you know will be testifying in this  
13 case and they're present and available, I'd ask them to  
14 all come forward at this time, and I'll have the  
15 Courtroom Deputy administer the oath to them  
16 collectively.

17 If you're going to be a witness in this  
18 case, please come forward and be sworn.

19 (Witnesses sworn.)

20 THE COURT: Thank you. You may return to  
21 your prior positions.

22 All right. Does either side wish to  
23 invoke the Rule in this case?

24 MS. ANDERSON: Yes, Your Honor, Google  
25 would, with the exception of corporate representatives

1 and experts.

2 THE COURT: All right. The Rule has been  
3 invoked with regard to all witnesses, except those that  
4 are corporate representatives or expert witnesses.  
5 This means, if you are not an expert witness in this  
6 case and you're not a corporate representative, but you  
7 expect to testify, then you must exit the courtroom at  
8 this time and remain outside of the courtroom until  
9 you're called to testify.

10 If there's anyone that falls in that  
11 category in the courtroom, please exit the courtroom at  
12 this time.

13 The Court will note for the record the  
14 Rule has been invoked.

15 (Witnesses leave the courtroom.)

16 THE COURT: All right. We'll proceed  
17 with opening statements.

18 The Plaintiff may make its opening  
19 statement to the jury.

20 MS. ANDERSON: Thank you, Your Honor.

21 THE COURT: Would you like a warning as  
22 to your time, Ms. Anderson?

23 MS. ANDERSON: Yes. Thank you very much,  
24 Your Honor. Five minutes will be wonderful.

25 THE COURT: All right. You may proceed.

1 MS. ANDERSON: Good afternoon, ladies and  
2 gentlemen.

3 It is a privilege to stand here with you  
4 today on behalf of Google, a company that perhaps some  
5 of you have seen on search engine pages. Ladies and  
6 gentlemen, I'd like to start to also thank you -- thank  
7 you again for your time and the service of our country's  
8 justice system. It is a very important service, and we  
9 are all very grateful for the time that you are spending  
10 with us here today.

11 I'd like to begin, again, introducing the  
12 people who are with us today here, lawyers for Google,  
13 at our table. Again, I'm Christa Anderson. We have Mr.  
14 Mike Jones, who you spoke with earlier, an attorney with  
15 Potter Minton for Google. Also with us is Mr. Mike  
16 Trinh, an attorney employed by Google, our corporate  
17 representative. And also with us is Jennifer Huber, who  
18 practices law with me as an attorney for Google at the  
19 law firm of Keker & Van Nest.

20 We thank you so much for your time.

21 Ladies and gentlemen, we are here today  
22 because of promises, promises that were made by  
23 Beneficial to Google and promises that were broken by  
24 Beneficial.

25 Now, what promises are we talking about?

1                   During the course of this case, ladies  
2 and gentlemen, you will hear testimony from witnesses.  
3 You'll see documents that are exhibits in the case about  
4 these promises. But they fundamentally boil down to  
5 four key points of evidence.

6                   The first of these is that in the year  
7 2010, Google and Beneficial agreed to a contract to  
8 settle some lawsuits that had been filed by Beneficial  
9 against Google and some of its customers.

10                  You will hear evidence that Google agreed  
11 to pay and, in fact, did pay almost \$2 and a half  
12 million. It paid that money to Beneficial in exchange  
13 for Beneficial giving Google and customers rights, known  
14 as patent licenses, to use Beneficial inventions in  
15 certain circumstances. And Google paid that money for  
16 freedom from litigation for itself and its customers  
17 under the terms of the contract.

18                  The third key point of evidence: Google  
19 paid that money for freedom from litigation to use  
20 Beneficial inventions under the terms of the contract.

21                  And finally, the fourth key point of  
22 evidence: Within a year, ladies and gentlemen, of  
23 taking Google's money, the almost \$2 and a half million  
24 paid by Google, Beneficial broke its promises and sued  
25 Google customers for using Google products in their

1 advertising.

2 Ladies and gentlemen, these key points of  
3 evidence which you'll hear about during the course of  
4 the trial will show to you that Beneficial indeed broke  
5 its promises and breached its contract with Google.

6 Now, I'd like to be clear. Google is not  
7 here asking for a large award of money to it. In fact,  
8 Google is only asking for \$1 in damages to be awarded by  
9 this jury. But what Google is also asking is that this  
10 jury find -- find that what Beneficial did was breaking  
11 its promises; find that it was a breach of contract so  
12 that Beneficial doesn't do this in the future to other  
13 Google customers.

14 So we're going to talk about this more in  
15 detail in a few minutes, but I just wanted to show you  
16 upfront, again, the settlement agreement which actually  
17 is in your juror notebooks and is going to be the  
18 discussion during this trial. This is the agreement  
19 between Google and Beneficial from the year 2010 and was  
20 supposed to end the disputes between Google and  
21 Beneficial over some lawsuits Beneficial had filed  
22 against Google and customers over the way that they were  
23 advertising on websites on the Internet.

24 In a nutshell, in those earlier lawsuits,  
25 Beneficial was claiming that Google and its customers



1 were using Beneficial patents in the way they were doing  
2 their advertising.

3           So I'd like to -- again, just to make  
4 sure we focus quickly and show you some of the key parts  
5 of the agreement, on the second page of the settlement  
6 agreement, which you'll have before you during the  
7 course of the case, there is a provision for licenses.  
8 And we'll talk about this in more detail.

9           But this Section 2 entitled Licenses  
10 Under the Settlement Agreement, will be the focus of  
11 discussion of much of the evidence in the course of the  
12 case, because it lays out the terms where Beneficial  
13 made a promise that it was giving the right to Google to  
14 use Beneficial inventions but also giving certain rights  
15 to Google customers to use Google products as part of  
16 what they were doing in their business as long as they  
17 met the conditions of the contract.

18           And it's this provision, and I've  
19 highlighted in yellow for you here that we're going to  
20 spend a lot of time talking about during the course of  
21 the case.

22           You'll also see in the settlement  
23 agreement that Section 3, right after the licenses, laid  
24 out how much Google was required to pay for those  
25 licenses for itself and its customers, and that it, in

1 fact, did pay.

2 But within a year of Beneficial taking  
3 Google's money in 2010, Beneficial turned around and  
4 sued Google's customers, different Google customers but  
5 nonetheless Google customers of ad products again. That  
6 is the heart of what we'll be discussing during the  
7 course of this trial.

8 Now, what Google products matter in this  
9 case?

10 You may be familiar with Google from your  
11 use of other Google products, but the products we're  
12 going to be talking about in this case relate to  
13 advertising. Google has a line of products and services  
14 which are known as DoubleClick products and services.

15 As a very general matter, they're  
16 products and services that allow a company that has a  
17 website, that company would like to make some money by  
18 carving out a piece of their website and rent it to  
19 someone else to advertise there. It's kind of like  
20 perhaps a billboard where someone earns a billboard and  
21 might like to earn some money renting it to another  
22 company who wants to advertise there.

23 Let's see an example. Take a country  
24 news website like Country Weekly. Country Weekly has  
25 this website and might decide it would like to block out

1 some room at the top right there (indicating). I don't  
2 know if you can see, but at the top right, there's a  
3 little long square advertisement for iTunes.

4           Country Weekly needed technology to be  
5 able to do this. And DoubleClick ads, products, and  
6 services offered that technology to websites like  
7 Country Weekly so they can earn some money renting spots  
8 to companies like iTunes. And here we just have shown a  
9 little bit sort of what's going on behind the scenes,  
10 and we'll hear more about this during the course of the  
11 case.

12           But there's actually computer code and  
13 technology, and we've shown some at the bottom here, and  
14 language and things that are called ad tags, which are  
15 the technology that DoubleClick offers, products and  
16 services related to Google DoubleClick ad tags that  
17 allow these advertisements to be made by companies like  
18 Country Weekly.

19           You'll learn that Google actually bought  
20 a company called DoubleClick back around 2008, and  
21 purchased that company and the products that it had and  
22 made it a part of Google. So now Google offers the  
23 DoubleClick ad products and services as part of the  
24 products and services it offers from the company to its  
25 customers.

1                   Now, in the year 2007/2008, that  
2 timeframe, the purchase of DoubleClick wasn't the only  
3 thing that was happening relevant to this case. The  
4 other thing that happened relevant to this case in 2007  
5 is that was the year that Beneficial first sued Google  
6 and customers for using Beneficial inventions on  
7 websites.

8                   Now, I'll touch very briefly on some  
9 information about patents, ladies and gentlemen, which  
10 you have heard, and the Judge instructs you on all the  
11 law and the Judge's instructions govern, but just  
12 descriptions of patents that you've heard, patents are  
13 generally given by the government for invention. It  
14 gives the owner the right to prevent others from using  
15 the patented invention.

16                  A violation of someone's patent is called  
17 patent infringement, terms you'll hear a lot during the  
18 course of this case. And a patent owner can choose to  
19 give rights to someone else to use the patented  
20 invention, and that's often referred to as a license.

21                  So, for example, I have a car, and I use  
22 my car to go to work. And once in a while, I might  
23 decide to give my older son permission to drive the car  
24 on one day. So he has a license to do that on that day,  
25 not every day, but that day, I gave him the right to do

1 it. So something like a license.

2 The patents at issue in this case, you  
3 may hear referred to shorthand as the '702 and the '943  
4 patents. And they're in your juror notebooks, but the  
5 reason we call them the '702 and the '943 patent is that  
6 every patent has a number.

7 And I've shown you on the slide the --  
8 the cover page of each patent. But on the cover page,  
9 you'll see at the top right corner is a very long  
10 number, and it's just such a mouthful that -- that we'll  
11 call them by the last three numbers to make it a little  
12 bit easier.

13 But as a general matter, these patents  
14 are related. They have the same inventors. And you'll  
15 learn in the course of the case, the claims that matter  
16 to this case are generally related in nature of the  
17 invention that they claim, a way of putting advertising  
18 content and combining in-service-related content in  
19 connection with viewer website.

20 So back to the lawsuits. 2007,  
21 Beneficial sued Google and other companies and sued them  
22 again in 2009. The 2007 lawsuit was on the '702 patent.  
23 The 2009 was on the '943 patent. But both those cases  
24 generally alleged that Google and customers infringe  
25 those patents both by direct and indirect infringement.

1                   And, again, the Judge will instruct you  
2 on the law, and it is the Judge's instructions that  
3 govern. I believe as a general matter, the Judge will  
4 tell you direct infringement generally is where someone  
5 is using all the parts, all the limitations of a  
6 particular claim.

7                   And indirect infringement. What does  
8 indirect infringement mean? Well, again, the Judge will  
9 instruct you on the law here. The Judge's instructions  
10 govern.

11                  But as a general matter, just to give you  
12 a flavor of -- of the nature of what indirect  
13 infringement is -- and there are -- there are lengthy  
14 elements that are talked about in the instructions as to  
15 what this is, but as a general matter, indirect  
16 infringement comes in two flavors.

17                  One of them is called inducing  
18 infringement, and one of them is called contributory  
19 infringement. So the act of encouraging or instructing  
20 others to infringe a patent is often referred to as  
21 inducing infringement.

22                  The act of contributing to the  
23 infringement of others by supplying them, for example,  
24 with a material component for that infringement might be  
25 referred to as contributory infringement.

1                   Just as an example, what does that mean?  
2 Well, for example, if I -- again, I have a car, and I  
3 sometimes let my son drive, and sometimes I don't, but  
4 if my younger son eggs him on and encourages him to take  
5 the car without permission, that might be inducing  
6 infringement. He didn't have a license to do it that  
7 day.

8                   But for contributory infringement, if my  
9 younger son takes the keys to give my son to drive the  
10 car the day he didn't have permission, that might be  
11 contributory infringement, giving someone a material  
12 component to do something he wasn't supposed to do.

13                  So we're talking about the lawsuits that  
14 Beneficial filed against Google and its customers. When  
15 Google learned it was sued, it took the allegations very  
16 seriously.

17                  Beneficial and Google fought for years in  
18 the lawsuit, but over the years, Google eventually  
19 decided it would stop fighting and instead decided to  
20 pay money to Beneficial for rights to using the  
21 inventions both for itself and for customers under the  
22 terms in the contract.

23                  So it paid that money for freedom from  
24 lawsuits for those customers when they were using the  
25 inventions in the ways described in the settlement

1 agreement.

2           Let's talk about some of the important  
3 provisions. You'll see in the contract, the settlement  
4 agreement, there's a definition of partners, and you'll  
5 see that it includes customers.

6           So you'll hear in the course of the case,  
7 sometimes people refer to partners, sometimes customers,  
8 but that's because in the agreement, the licenses go to  
9 partners, and among partners is defined including  
10 customers, like Google customers.

11           Again, the settlement agreement  
12 provision, that will matter the most perhaps in the  
13 course of the evidence you hear, and all the evidence  
14 you hear, you decide on the appropriate weight for it,  
15 but one important provision of this agreement is the  
16 license.

17           And this is the license that Google paid  
18 the \$2.45 million for. Let's break it down just a  
19 little bit more for you. It's called -- we call it  
20 little sub (ii). It's in Section 2(a).

21           And in this provision of the license, if  
22 you can follow along with me, it talks about the  
23 Defendants and their affiliates, past, current, and  
24 future partners. Partners include customers.

25           So Google and its affiliates are talking



1 about, among other things, Google's customers. Those  
2 customers have a license but only to the extent of that  
3 partner's role in making, having made, or using,  
4 selling, offering for sale, or importing any products or  
5 services of the Defendants.

6           So Google's products and services would  
7 be covered with respect to that. And then going down,  
8 but also only to the extent that what the partner was  
9 doing here, using Google products and services would  
10 constitute direct or indirect infringement of one of  
11 Beneficial's patents.

12           So you'll be hearing a lot during the  
13 course of the case about whether or not what the  
14 customers were doing are licensed under this provision.  
15 And you'll even see that the -- the settlement agreement  
16 gives an example of this, making it clear that Google is  
17 not claiming here that Google's customers have a  
18 universal right to use Beneficial inventions whenever  
19 they want.

20           But when it meets the terms of the  
21 contract, when they're using Google products and  
22 services and when it would constitute indirect  
23 infringement were it not for the license, then this is  
24 something that is licensed under the provisions of the  
25 contract.

1                   Now, you'll hear arguments potentially  
2 from Beneficial during the course of the case claiming  
3 that Google has to -- had to admit infringement as part  
4 of this settlement agreement in order to have rights  
5 under the licenses. And that's not so.

6                   You'll see in the course of the evidence  
7 that there's a provision in the agreement making clear  
8 that nothing in the agreement shall constitute an  
9 admission of infringement by Google. These are disputed  
10 charges, and Google preserved as part of its rights  
11 under the settlement agreement it would not have to  
12 admit infringement.

13                   So what happened after the 2010  
14 settlement agreement? Well, again, less than a year  
15 later, another lawsuit was filed by Beneficial.  
16 Beneficial sued Google customers, including Advance,  
17 ALM, America Media, Autotrader, and Demand Media for the  
18 way they were advertising on their websites claiming  
19 they were advertising in a way that infringed the same  
20 patents, the '702 and '943 patents, and -- and alleging  
21 that they were infringing in just the way that Google  
22 instructs them to use DoubleClick ad products and  
23 services to put ads on our websites.

24                   So Google learned about these lawsuits  
25 and learned about them because the customers were

1 complaining to Google: Hey, we've been sued. What are  
2 you going to do about it?

3           So Google reached out to Beneficial and  
4 said: Please confirm to our customers that while you  
5 may be suing them on use of other products, you're suing  
6 on the use of Google's products, and here, the way that  
7 you're suing and the allegations you're making are  
8 things that are licensed. Please confirm you're not  
9 suing for customer's use of DoubleClick ad products and  
10 services.

11           But Beneficial refused to do that and  
12 continued to sue them for the use of Google DoubleClick  
13 products.

14           So Google hired lawyers and came to Court  
15 and asked to be part of this case in order to prove that  
16 the customers were licensed, and Beneficial never should  
17 have filed these lawsuits in the first place.

18           So because of their use of Google's  
19 DoubleClick products and the way it's been claimed in  
20 this case, they satisfy the terms of the settlement  
21 agreement and its license.

22           So how do we know that Beneficial has  
23 broken its promises? Three important points to know  
24 here, ladies and gentlemen.

25           First, the first point we see up here:

1 Google customers use DoubleClick to show ads on their  
2 websites. This is not a disputed point in this case.  
3 The customers that were sued, included customers that  
4 one of the ways they get ads on their websites was using  
5 DoubleClick ad products and services.

6 And remember, using Google products is  
7 part of the license provision that we were talking about  
8 a little earlier.

9 Second, the second bullet point we see  
10 here is that we know that Beneficial has breached, and  
11 the evidence will show that Beneficial has breached,  
12 because what Google does to instruct and encourage  
13 customers, the way they instruct and encourage them to  
14 use their ad tags would constitute inducement of  
15 infringement pursuant to what Beneficial says is  
16 infringing its patents.

17 And finally, it was licensed because  
18 Google contributes important components, Google  
19 DoubleClick ad products and services, to the very things  
20 Beneficial says are infringing.

21 Now, let's go back to -- discussing the  
22 inducement question, what evidence are we going to hear  
23 about to show that, in fact, Google customers are  
24 licensed? Because what Google does is inducement of  
25 infringement, according to what Beneficial claims

1 infringe its patents.

2           Well, some of the key evidence you will  
3 hear in the course of the case is from the words of  
4 Beneficial itself. When Beneficial sued Google's  
5 customers, it was required under the court rules to  
6 actually lay out in great detail in a very long document  
7 all the reasons it believed Google's customers infringed  
8 the patents, the Beneficial patents.

9           And what Beneficial says in that document  
10 is infringing of those patents is exactly what Google  
11 instructs and encourages its customers to do with Google  
12 products, and that means it is licensed under -- under  
13 the agreement.

14           THE COURT: Five minutes remaining,  
15 Counsel.

16           MS. ANDERSON: Thank you, Your Honor.

17           Now, you will hear potentially arguments  
18 during the course of this case that Google cannot prove  
19 indirect infringement, because in this case, it denied  
20 its customers were infringing. But, ladies and  
21 gentlemen, there is nothing inconsistent about that.  
22 Google does not believe its customers infringe because  
23 they are licensed. They had the right to use the  
24 invention. They are not infringers.

25           You will hear evidence on the subject

1 of -- of Google and the inducement question from  
2 Mr. Jonathan Bellack, director of product management at  
3 Google, and he will tell you about the things that  
4 Google does to instruct and encourage customers to use  
5 DoubleClick in just the way Beneficial claims infringes  
6 the patents, including, clear, getting-started guides  
7 that instruct our customers how to use our ad tags and  
8 get the ads on websites in just the way Beneficial  
9 claims infringes.

10           And he will also tell you about a 24/7  
11 support structure we have available. It's there to  
12 instruct and encourage customers on how to use our  
13 products and get them -- get those ads on the websites.

14           Final point, ladies and gentlemen, on the  
15 subject of contribution, how do we know that under  
16 Beneficial's theory of what infringes its patents that  
17 Google contributes to that infringement?

18           Well, we know because testimony you'll  
19 hear, again, from Mr. Jonathan Bellack and the documents  
20 that he will show you in the course of his testimony, he  
21 will explain to you the purpose of Google's DoubleClick  
22 ads is to display ads on websites. That's what it does.  
23 That's what it does.

24           Of course, that's an important component  
25 of Beneficial's invention in the way they describe it.

1 And, in fact, you'll hear from Mr. Sheldon Goldberg, who  
2 will tell you that what Google DoubleClick ad products  
3 and service make possible, getting an ad on a website,  
4 is the essence of his invention. He explains to you.  
5 He explained in testimony in this case that his  
6 invention, it deals with the display of an advertisement  
7 along with website information at the same time that the  
8 user does. That's generally what it does.

9           So Google's DoubleClick contributes  
10 important components to what Beneficial claims infringes  
11 its patents. And you will hear from Beneficial and  
12 Beneficial will argue: Well, Google is not really  
13 contributing to infringement under that theory, because  
14 Google's DoubleClick has substantially non-infringing  
15 uses. But as you hear the evidence, you will learn that  
16 what Beneficial claims is substantial actually is not  
17 and requires a misreading of the patents in -- in the  
18 way they're applying that theory. And you'll hear more  
19 about that.

20           So, ladies and gentlemen, back to the  
21 final slide, back to the key points of evidence, these  
22 key points of evidence, ladies and gentlemen, will show  
23 you that what Beneficial has done here is a breach of  
24 the contract. They broke their promises, and they sued  
25 customers when they shouldn't have.

1                   So we will ask you to find at the end of  
2 this case that what Beneficial has done is wrong and is  
3 indeed a breach of contract.

4                   We ask that you send this message to  
5 Beneficial so that they don't sue customers in the  
6 future.

7                   Thank you, ladies and gentlemen.

8                   THE COURT: All right. We'll now hear  
9 opening statements from the Defendant.

10                  Mr. Adams, would you like a warning on  
11 your time?

12                  MR. ADAMS: Yes, Your Honor, three  
13 minutes.

14                  THE COURT: All right. Three minutes, it  
15 is. Proceed when you're ready.

16                  MR. ADAMS: Your Honor, thank you. May  
17 it please the Court.

18                  Members of the Jury, good afternoon.

19                  In the course of this trial, there will  
20 be many things that the parties do not dispute. We  
21 don't dispute that in 2007, Beneficial Innovations sued  
22 Google for infringement of one of its patents. We don't  
23 dispute that in 2009, Beneficial brought a second  
24 lawsuit against Google for infringement of a second  
25 patent.



1           There is no dispute that after some  
2 litigation, the parties decided to resolve their  
3 disputes by entering into a settlement agreement.

4           There's also no dispute that after that  
5 settlement agreement was entered into, Beneficial sued  
6 other companies. There's no dispute that some of those  
7 companies are what is known as partners or customers of  
8 Google.

9           Where the parties diverge is whether or  
10 not Beneficial was prohibited from suing those customers  
11 under the terms of the license agreement. Now, the  
12 Court has placed in your juror notebooks a copy of the  
13 settlement agreement. You've also received the copies  
14 of the two patents that are at issue.

15           And while the Court has told you that  
16 this is a breach-of-contract case, this really is -- as  
17 my colleague said to you in the voir dire, this really  
18 is a case within a case. The reason the patents are  
19 there is because, when we go through the terms of this  
20 settlement agreement, you will understand that whether  
21 Beneficial was wrong or not depends on infringement  
22 issues.

23           What I want to do is I want to put on the  
24 board one of the patents. This is the '702 patent. The  
25 next past is the '943. You will have the patents. In

1 the patents, there are numerous claims. For the '702  
2 patent, the claim that was asserted against Google and  
3 the claim that was asserted against all the other  
4 Defendants was Claim 53.

5           The '943 patent has about a hundred or so  
6 claims in it, and there were three additional claims  
7 that we asserted. The claims are what sets forth the  
8 invention. So when you want to figure out whether or  
9 not something was part of the invention or part of a  
10 component of the invention, you look at the claims.

11           One of the things that we want to discuss  
12 is whether or not DoubleClick, which is their ad-serving  
13 technology, was a part or material part or any part of  
14 the claims that were asserted. And what I've done here  
15 is I've placed on the board these letters.

16           And the reason I did that is this:  
17 Claims are broken down into what we call limitations or  
18 elements. And when you read the patents, you'll see it  
19 has a Step A, a Step B, a Step C, a Step D. All of  
20 these combine to make the invention. What was the  
21 invention?

22           Well, let's start with what I've labeled  
23 here as the preamble. The preamble is what starts off,  
24 and it tells you sort of what's going on here. And what  
25 the preamble of Claim 53, for example, says: This is an

1 apparatus for a service on a communications network  
2 comprising of certain things.

3           When we talk about an apparatus, what are  
4 we talking about?

5           Well, in the cases, including the case in  
6 which we asserted against Google and all of the other  
7 Defendants, the apparatus that we were suing, they were  
8 websites. They weren't parts of a website. The  
9 apparatus was the website. And that's because the  
10 apparatus had to be something that provided a service to  
11 a user, a service such as access to streaming video,  
12 access to news, access to shopping. That was the nature  
13 of the inventions that are included in both of the  
14 patents.

15           The key to the invention is that the  
16 apparatus had to have what we call computer -- well,  
17 programmatic elements is a claim term, but the Court  
18 defined it as computer readable instructions. And  
19 you'll have that in your notebook. Those instructions  
20 had to allow the website to do certain things in order  
21 for the user who went to the website to see a webpage  
22 that looked like this, a webpage that had services that  
23 were being rendered, such as looking at a newspaper,  
24 displayed concurrently with advertising.

25           That's a little bit about the invention

1 and what the lawsuits were about.

2           The question that you have to answer is  
3 whether or not DoubleClick, the ad-serving ad tags,  
4 whether or not they constituted a material part of this  
5 invention. We're going to show you that it doesn't.

6           Now, the key questions in this case, and  
7 the only one is, did we breach the settlement agreement  
8 by suing their customers. And to answer those  
9 questions, I'm going to spend a few minutes discussing  
10 the scope of the license that was given. I'll talk to  
11 you about the very, very essential question in this  
12 case, which is whether Google indirectly infringed the  
13 patents based on its partner's use of DoubleClick. And  
14 then finally, I'm going to spend a half a minute on  
15 damages.

16           What about the scope of the license?

17           Settlement agreement, you have it in your  
18 notebook. There are two things you'll learn about the  
19 settlement agreement in this case. One is, there was no  
20 promise made by Beneficial not to sue Google's partners.

21           Second thing you will learn is that the  
22 license that Google bargained for and the license that  
23 was given was not a blanket license to their customers,  
24 but it was conditional. And we'll talk about that.

25           What about this promise?

1 Well, you'll see a lot of sections in the  
2 license agreement, but I want you to focus on Section 6.  
3 This is the section where the parties placed what's  
4 known as a covenant not to sue. The covenant is another  
5 way of saying a promise. So what the parties did is sat  
6 down and negotiated. They said: Look, in this section,  
7 we will say, Beneficial, you promise not to sue certain  
8 people. Read all of this language.

9 What you'll see is that the only entity  
10 that Beneficial promised not to sue, after we entered  
11 the license agreement, was Google and its affiliates and  
12 certain other companies that were part of the case,  
13 including NBC Universal. There was no covenant, no  
14 promise negotiated by any of the parties that Beneficial  
15 couldn't sue Google partners.

16 Well, what did they get? What did Google  
17 bargain for?

18 Well, they bargained for a license. And  
19 what we're going to do in this case is we're going to  
20 show you the terms of the license. As Defense  
21 counsel -- or Plaintiff's counsel said, the license  
22 applied to their partners. In fact, what it says here,  
23 future partners, it's defined as the customers. And in  
24 the case that we were in when Google intervened, their  
25 customers included these Defendants: Advance

1 Publications, ALM Media, Auto Trader. They were the  
2 partners that were involved in our litigation.

3           The license didn't stop there, though.  
4 It didn't say we're going to license their partners.  
5 The language went on to say: You're licensed but only  
6 to the extent of the partner's role in using products by  
7 Google.

8           We don't dispute that. The product at  
9 issue is DoubleClick, which is their ad-server  
10 technology. Now, Members of the Jury, if the license  
11 stopped there, maybe Google has a claim, but it doesn't  
12 stop there.

13           It goes on to say: And only to the  
14 extent that such use -- that is, the partners use of  
15 DoubleClick -- would constitute either direct or  
16 indirect infringement of a claim by Google.

17           Now, in this case, there's no question  
18 about direct infringement. Google doesn't contend that.  
19 They don't say that the partner's use of DoubleClick  
20 means that Google directly infringes. They're arguing  
21 that the use constitutes indirect infringement. This is  
22 a tricky part of the license agreement, and because it's  
23 tricky, we did something else.

24           We have Section B that has a  
25 for-avoidance-of-doubt section. What this section does

1 is it further explains and clarifies exactly what the  
2 parties meant the scope of the license was. It says:  
3 This license does not license your partners simply  
4 because the partner uses a product or service applied by  
5 the Defendants. In this case, DoubleClick.

6           We spell it out. Just because they're  
7 using DoubleClick doesn't mean they're licensed. There  
8 are certain things that have to happen. Well, what did  
9 we say had to happen. We gave some examples. If a  
10 partner's website infringes a claim of the '702 patent;  
11 B, if the partner's website uses DoubleClick when  
12 infringing; and C, if providing DoubleClick constitutes  
13 indirect infringement by Google -- if those three things  
14 occur, then that partner is licensed and then you can't  
15 sue. That's what these -- the -- the terms of the  
16 license says.

17           So the issue here is, Google's partner is  
18 licensed only if Google would indirectly infringe the  
19 patents based on its partner's use of DoubleClick.  
20 That's what we agreed to.

21           What's the upshot of that?

22           Well, the upshot is, is that in order for  
23 you or Google to determine that we've breached, there  
24 has to be some finding that use of DoubleClick  
25 constitutes indirect infringement. That needs to take

1 place.

2 Well, what's the answer to that question?

3 Let's move on to this important point.

4 To prove indirect infringement, Google  
5 has to prove one of two things. Either (a) that the use  
6 of DoubleClick constituted contributory infringement; or  
7 (b) that they induced infringement by giving their  
8 customers DoubleClick.

9 For contribution and contributory  
10 infringement, Members of the Jury, Google has the burden  
11 of proof. What I mean by that is this: They need to  
12 put forth evidence to prove certain things. Beneficial  
13 doesn't have to say a word. It's their burden. What do  
14 they have to show? They have to show that one of their  
15 customers directly infringed the patent. It makes  
16 sense.

17 In order for them to contribute to  
18 infringement, somebody has to be infringing. That's  
19 what they have to show you in this case. They also have  
20 to show you that DoubleClick is a material part of the  
21 invention. The invention, again, are the claims.  
22 And they have to show you that DoubleClick is not  
23 suitable for substantial non-infringing uses; another  
24 way of saying DoubleClick was made to infringe. It  
25 can't be made for some other substantial non-infringing



1 use. They've got to prove these three things.

2 In this opening, I'm not going to talk  
3 about the middle part. I'm only going to talk about two  
4 of those elements, but, again, all three must be proven  
5 by Google.

6 What about this issue about direct  
7 infringement of the patent?

8 Here, Members of the Jury, is the  
9 evidence you will not hear in this case. There will be  
10 no document; there will be no testimony from any witness  
11 from any Google partner that says, yeah, we infringe.

12 In fact, Google will never admit that in  
13 this trial. The partners settled; they entered into  
14 license agreements.

15 You will not hear or see any document  
16 that even in those license agreements any of those  
17 partners admitted that they infringe. So now you don't  
18 have an admission.

19 Well, what else can they show to prove  
20 infringement? Well, maybe there was some finding by a  
21 judge in another case or a jury in another case that  
22 says: Yes, we found that when DoubleClick is being used  
23 on that partner's website, that's infringement.

24 Members of the Jury, you're not going to  
25 hear that either. There will be no evidence of that.

1 They have the burden of proving to you in this case that  
2 there was infringement. That means they've got to put  
3 on an infringement case. That's typically done by  
4 experts, experts who have looked at the infringing  
5 website. They've looked at the patent. They've  
6 compared the two and they've said there's infringement  
7 there.

8 Google has an expert in this case.  
9 They've paid an expert. He will get on the stand.  
10 Members of the Jury, that expert will not testify about  
11 anything having to do with infringement. He has no  
12 opinions whatsoever.

13 Well, what are they to do? What will  
14 they do to try to show infringement?

15 Well, this is what they will do. At  
16 least I expect them to do this, and maybe they won't,  
17 but this is what I expect. They will point to the  
18 complaints that we filed in the underlying action  
19 against the Defendants and say: Look, in their  
20 complaint, they allege that there was infringement. And  
21 they will point to another document that you're going to  
22 hear called an infringement contention. It's a document  
23 that's issued early in the case.

24 And they'll say: Look, that's what  
25 Google -- that's what Beneficial believed, and they're

1 going to want you to find from those documents that  
2 infringement occurred. And you will hear all the  
3 testimony in this case, and you will hear how those  
4 infringement contentions in those complaints, how they  
5 apply, how they fit. There will be no evidence of  
6 direct infringement in this case.

7 Well, what about this issue of  
8 substantial non-infringing uses? Let's deal with that  
9 real quickly.

10 I expect the Court to instruct you that a  
11 use is substantial, if it is not unusual, if it's not  
12 occasional, if it's not experimental.

13 Well, what do we know about the case?  
14 What do we know about the patent? What do we know about  
15 DoubleClick?

16 This is what you're going to learn. The  
17 invention in this case applies to websites. Not all  
18 websites infringe the '702 patent. Not all websites.  
19 There are some websites that infringe. There are some  
20 websites that don't. For example, one of the claims  
21 that you look at in the '702 patent requires that the  
22 website have a store for store -- storing user  
23 information.

24 You're going to hear that there are some  
25 websites that don't have to store. They don't. You

1 don't have to register. They don't take user  
2 registration. They don't have it. If they don't have  
3 it, they don't infringe.

4 Well, what do we know about DoubleClick?

5 Well, this is what we know about  
6 DoubleClick. DoubleClick can be used on websites that  
7 infringe, and DoubleClick not only can be used but it's  
8 used on websites that don't infringe. In fact, you're  
9 going to hear from their own witnesses DoubleClick can  
10 be used on any apparatus that has access to the  
11 Internet.

12 On this fact alone, there is no  
13 contributory infringement, because DoubleClick has  
14 substantial non-infringing uses.

15 What else do they have to show for this  
16 issue, this issue of inducement? Well, what do we know  
17 about inducement?

18 Again, this is what DoubleClick needs to  
19 show. They need to show that a Google partner directly  
20 infringed, and they also need to show that Google had a  
21 specific intent to induce its partners not to use  
22 DoubleClick, all right?

23 That's not the standard. They have to  
24 have the specific intent to induce their partners to  
25 infringe the claims of the patent. Well, I've already

1 discussed this issue of whether or not they're going to  
2 prove any of their customers or partners infringe. They  
3 won't.

4           So what about the specific intent issue?  
5 Well, here's what we know. When you look at the claims,  
6 including the '702 and all these others, there are all  
7 these elements, and there will be no dispute that  
8 there's no intent to infringe any parts of this claim.

9           There was one section in here, which I  
10 believe is (h), and the reason I did that is this: This  
11 is the part of the claim, Claim 53, that has some  
12 connection to DoubleClick, all right? And you're going  
13 to read the claim. There will be some testimony about  
14 it, but there's a lot of words. And what you're going  
15 to notice there is this: In all of those words, the  
16 only relation to DoubleClick is this little part that  
17 says advertising related information. That's -- that's  
18 it. That's what Google contributes to this patent.  
19 That's it.

20           Well, what do we know about that?

21           Well, we know, at best, Google only  
22 instructs its partners how to use those ad tags. That's  
23 all they do. They give it to them. They say this is  
24 how you do it. There is no evidence in this case that  
25 they tell them how to have a store for store user

1 identification, how they have to combine it, none of  
2 that. There will be no evidence that Google induces any  
3 of its partners to infringe the claims.

4 Well, where does that leave us?

5 It leaves us with this: When you're  
6 asked this question, would Google indirectly infringe  
7 the patents based on its partner's -- the answer at the  
8 end of this case, after they've put on their case, will  
9 be: No, they don't.

10 And if you answer that question no, then  
11 the big question: Did we breach? It has to be no,  
12 because we only breach if we sued a customer that was  
13 licensed. And as you're going to hear, those licenses  
14 come with conditions, and none of those conditions  
15 applied.

16 What about damages?

17 Well, very shortly, there will be no  
18 evidence that Google has suffered any damages, any  
19 actual damages. None. In fact, there will be no  
20 evidence that they suffered any harm. At the end of  
21 this case, Members of the Jury, you're going to have to  
22 find, based on the evidence, that there was no breach,  
23 that Beneficial was well within the rights that it  
24 bargained for in the license agreement to bring the  
25 lawsuits that it did against all of the other

1 Defendants, after we entered the settlement agreement.

2 Thank you.

3 THE COURT: All right. That completes  
4 the closing statements from the parties. Is the  
5 Plaintiff prepared to call their first witness?

6 MS. ANDERSON: Yes, Your Honor. We call  
7 Mr. Michael Trinh.

8 THE COURT: All right.

9 MS. ANDERSON: Your Honor, may we  
10 approach for our team to distribute binders?

11 THE COURT: Yes, you may.

12 MS. ANDERSON: Thank you, Your Honor.

13 THE COURT: The witness will come forward  
14 and have a seat here at the witness chair.

15 THE WITNESS: Yes, sir.

16 THE COURT: Have a seat.

17 THE WITNESS: Thank you.

18 THE COURT: All right. Ms. Anderson, you  
19 may proceed.

20 MS. ANDERSON: Thank you, Your Honor.

21 MICHAEL TRINH, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

22 DIRECT EXAMINATION

23 BY MS. ANDERSON:

24 Q. Good morning, Mr. Trinh.

25 A. Good afternoon.

1 Q. Or excuse me. Good afternoon. I apologize.

2 A. Sorry.

3 Q. Good afternoon.

4 Would you please introduce yourself to the  
5 jury?

6 A. Hi. My name is Michael Trinh. I'm a Google  
7 attorney.

8 Q. Would you please tell the jury a little bit  
9 about yourself?

10 A. To go through the nine questions that y'all --  
11 y'all answered this morning, my name is Michael Trinh.  
12 I live in San Francisco, California. I've never been  
13 married. I have no kids. I work at Google, and I've  
14 worked there for a little over five years.

15 I -- in terms of education, I got my  
16 undergraduate degree in computer science at the  
17 University of North Carolina Chapel Hill where I grew  
18 up, and then went to law school at Georgetown near D.C.  
19 and moved out to San Francisco. And I've never been on  
20 a jury before.

21 Q. And where are you originally for Mr. Trinh?

22 A. I was born in Washington, D.C., or near  
23 Washington, D.C., and I grew up in Raleigh, North  
24 Carolina.

25 Q. And what is your profession?



1 A. Yes, ma'am. I'm an attorney at Google.

2 Q. All right. How long have you worked at  
3 Google, Mr. Trinh?

4 A. Since August 2008.

5 Q. And before we get into more about your current  
6 position at Google, just so the jury understands the  
7 focus of your testimony, do you have knowledge about an  
8 agreement between Google and Beneficial?

9 A. Yes, ma'am.

10 Q. And what agreement are you aware of between  
11 Google and Beneficial?

12 A. A settlement agreement that resolved some  
13 litigations that was signed in 2010.

14 Q. All right. You should have before you in your  
15 binder, Mr. Trinh, a series of exhibits.

16 Would you please turn to Exhibit 1?

17 A. Yes, ma'am.

18 Q. Thank you. Do you have that before you?

19 A. Yes, ma'am.

20 Q. What is it?

21 A. This is that settlement agreement that we just  
22 discussed.

23 Q. All right.

24 MS. ANDERSON: Your Honor, may I have  
25 permission to display this to the jury? I believe it is

1 preadmitted.

2 THE COURT: Then if it's preadmitted, use  
3 it without leave of the Court.

4 MS. ANDERSON: Thank you, Your Honor.

5 THE COURT: Uh-huh.

6 Q. (By Ms. Anderson) Now, Mr. Trinh, would you  
7 please explain to the jury if you had any job  
8 responsibilities related to Exhibit 1?

9 A. Yes, ma'am. I worked on this agreement on  
10 behalf of Google.

11 Q. Let's talk about your current work at -- at  
12 Google. What is your current job with Google?

13 A. I'm product counsel at -- sorry. I'm product  
14 counsel at a research group at Google called Google X.

15 Q. All right. And please explain what is Google  
16 X?

17 A. Google X is kind of a research lab in Google.  
18 Some of the more well-known things that it does is  
19 self-driving cars, contact lenses for diabetics. What I  
20 work on are aviation issues for high-altitude  
21 stratosphere balloons that provide Internet service.

22 Q. And can you give the jury just an example of  
23 what you might do on a daily basis?

24 A. I'll try. I kind of am the legal handyman for  
25 -- for the products, and I deal with a broad variety of

1 legal issues from telecom regulatory stuff to working  
2 with the FAA and its components across the world, visas,  
3 import/export issues, you name it.

4 Q. What was your job at Google before you started  
5 working with the Google X Division?

6 A. Yes, ma'am. I was a litigation attorney with  
7 a patent group at Google.

8 Q. During what period of time were you a  
9 litigation attorney with the patent group at Google?

10 A. Since I started at Google in August 2008 until  
11 I left to go out to X in April of last year, 2013.

12 THE COURT: Mr. Trinh, if I could  
13 interrupt. Would you please try to slow down a little  
14 bit?

15 THE WITNESS: Sorry, sir.

16 THE COURT: The speed of your speech is a  
17 little fast.

18 THE WITNESS: I apologize.

19 THE COURT: Not a problem.

20 Go ahead, Counsel.

21 MS. ANDERSON: Thank you, Your Honor.

22 Q. (By Ms. Anderson) What were your job  
23 responsibilities at a general level during the time that  
24 you were with the patent group at Google?

25 A. Yes, ma'am. I was responsible for handling --

1 or have primary responsibility for responding to  
2 investigating and, you know, really just taking care of  
3 making sure Google took care of our -- any allegations  
4 of patent issues.

5 Q. And did you have any job responsibilities that  
6 related in any way to working with Google engineers?

7 A. Yes, ma'am. My -- my job role existed so  
8 that, you know, there was an attorney responsible for  
9 looking at these things instead of having our engineers  
10 spend time away from coding and building products.

11 Q. During the course of your work with the patent  
12 group, did you ever have job responsibilities related in  
13 any way to any Beneficial lawsuits?

14 A. Yes, ma'am.

15 Q. Please explain that to the jury.

16 A. When I first arrived at Google in August of  
17 2008, the -- Beneficial -- the first Beneficial lawsuit  
18 was one of the first cases that I picked up.

19 Q. Okay. And what year was that?

20 A. This is 2008.

21 Q. From the work that you did in connection with  
22 that, do you know whether Beneficial made accusations  
23 against Google during that lawsuit?

24 A. Yes, ma'am.

25 Q. In a very general level, would you describe

1 the accusations made by Google -- excuse me. Strike  
2 that.

3           Would you please describe at a general level  
4 what accusations Beneficial had made against Google  
5 during that lawsuit?

6           A.    Yes, ma'am. Beneficial was alleging that  
7 Google and some of our websites were using or selecting  
8 and presenting ads to users in a certain way that  
9 infringed the Beneficial patents.

10          Q.    Okay. What particular patents were alleged in  
11 that 2007 lawsuit?

12          A.    Yes, ma'am. It's the patent -- it's a U.S.  
13 patent ending in '702 on behalf of Beneficial.

14          Q.    Okay. Thank you.

15                I'd like to show you, if you could turn in  
16 your binder, to Exhibit 29.

17          A.    Yes, ma'am.

18                MS. ANDERSON: And if we can have that  
19 displayed as well as it is preadmitted.

20          Q.    (By Ms. Anderson) Do you recognize Exhibit 29,  
21 Mr. Trinh?

22          A.    Yes, ma'am.

23          Q.    And what is?

24          A.    This is one -- this is a Beneficial patent  
25 that was asserted against Google in the 2007 lawsuit,

1 the '702 patent.

2 Q. All right. At a very general level, can you  
3 describe to the jury the layout of a patent using  
4 Exhibit 29?

5 A. Yes, ma'am. As y'all probably have seen in  
6 the video, there's a couple of different sections to a  
7 patent. The first page is the face of the patent. And  
8 it has some kind of basic information on it. On the top  
9 right, you see the U.S. Patent number, which in this  
10 case is U.S. 6,712,702, and that's where we get the  
11 shorthand for the '702 patent.

12 Moving to the top left, you see -- you see the  
13 name of the patent, the title of it, which is Method and  
14 Systems for Playing Games on a Network. You see  
15 inventors listed below. You see some other kind of  
16 basic statistics or basic information about the patent.  
17 And then in the pages that follow, you see -- you see  
18 drawings and figures. Then you see a section of text  
19 with little numbers on the top. And those are the --  
20 that's the specification that we spoke -- that I think  
21 the jury's heard about a little bit. And that's the  
22 text of the patent.

23 Towards the end of the text of that patent,  
24 starting in the columns, 31, a couple pages in, is where  
25 the claims of the patent start, starting with No. 1.

1           And these are -- these are where Beneficial  
2 defines kind of the boundaries of their invention.

3           Q.    Thank you very much.

4           A.    Yes, ma'am.

5           Q.    Do you have knowledge as to whether Beneficial  
6 ever sued Google again during the time that you were  
7 serving as patent litigation counsel for Google?

8           A.    Yes, ma'am.

9           Q.    When did that happen?

10          A.    In about 2009.

11          Q.    Can you describe for the jury, at a general  
12 level, what was the nature of the allegations in that  
13 lawsuit?

14          A.    In that lawsuit, Beneficial asserted a second  
15 patent -- or another patent against Google, the patent  
16 ending '943.

17          Q.    I'd like to show you Exhibit 30, which should  
18 be in your binder.

19                   MS. ANDERSON:  And may we have that  
20 displayed as well?  Because it was pre-admitted.

21          Q.    (By Ms. Anderson) Do you recognize Exhibit 30,  
22 Mr. Trinh?

23          A.    Yes, ma'am.

24          Q.    And what is this?

25          A.    This is the '943 patent that was asserted by

1 Beneficial against Google in the second lawsuit.

2 Q. All right. And in a general level, is there  
3 any relationship between the '702 and '943 patents  
4 besides the fact that they were the subject of lawsuits  
5 against Google?

6 A. Yes, ma'am. There are a couple.

7 Q. And what are their relationships?

8 A. The first is they share common -- they share  
9 common inventors.

10 The second is they claim priority to the same  
11 underlying patent application.

12 And the third is they generally touch on the  
13 same subject matter.

14 Q. And as relates to this case, what is that  
15 subject matter?

16 A. It's selecting and serving ads on -- on -- on  
17 websites.

18 Q. In the 2007 and 2009 Beneficial lawsuits you  
19 described, did Beneficial sue any other companies for  
20 infringement of those patents, along with Google, in  
21 those lawsuits?

22 A. Yes, ma'am.

23 Q. And did any of those companies have any  
24 relationship with Google?

25 A. Yes. There are two that I can think of.



1 Q. Could you please name them for the jury?

2 A. The two that I'm thinking of are, one -- the  
3 first is YouTube, which is a subsidiary of Google, but a  
4 separate corporate entity. The second is NBC Universal,  
5 which was a customer of Google for using DoubleClick  
6 products.

7 Q. Okay. And what is YouTube? Describe YouTube  
8 for the jury.

9 A. YouTube is a website where you can upload and  
10 watch video online.

11 Q. Okay. Is YouTube a part of Google?

12 A. Yes, ma'am.

13 Q. All right. What, if any, responsibilities did  
14 you have during the time that you were working with  
15 Google in the patent group concerning these lawsuits  
16 filed against Google on this -- on the '702 patent and  
17 '943 patents?

18 A. I was the Googler with day-to-day  
19 responsibility for these cases starting with when I  
20 joined up until they were resolved in 2010.

21 Q. Okay. And you used the word Googler there.  
22 What does that mean?

23 A. Sorry. That's a Google employee. That's what  
24 we call ourselves.

25 Q. Okay. Now, as part of your responsibilities

1 in managing those cases as a Google employee with the  
2 patent group, did you have any responsibilities for  
3 reviewing any statements made by Beneficial during the  
4 course of that case -- those cases?

5 A. Yes, ma'am.

6 Q. And could you give the jury examples of the  
7 kinds of Beneficial statements you reviewed in the  
8 course of that work?

9 A. Yes, ma'am.

10 During the course of litigation, there's an  
11 extensive court process known as discovery. And that  
12 process allows parties to exchange information to  
13 investigate and develop and get to the bottom of  
14 disputed issues of fact.

15 Could take a couple of different forms. We've  
16 seen some written. They can be depositions. And as  
17 part of my day-to-day responsibility, I reviewed -- I  
18 reviewed much of it.

19 Q. Did any of the materials you reviewed include  
20 infringement contentions?

21 A. Yes, ma'am.

22 Q. And could you describe to the jury what  
23 infringement contentions are.

24 A. Infringement contentions -- and I've -- you've  
25 probably seen a little bit, but they're documents where

1 a party asserting a patent has to lay out in detail what  
2 claims -- what part of the patent they claim infringes,  
3 what they -- what they say infringes and how.

4 They have to lay out specific theories and go  
5 through the claims that -- the text of the patent on a  
6 section-by-section basis. And they have to compare  
7 the -- the text of the patent with what they say  
8 infringes.

9 Q. Did Beneficial specify in the earlier lawsuits  
10 what kind of infringement it was alleging against  
11 Google?

12 A. Yes, ma'am.

13 Q. And could you specify what that is?

14 A. They accused -- they -- they accused Google  
15 and YouTube of both direct and indirect infringement.

16 Q. All right. And when you say that Beneficial  
17 accused Google of direct infringement, what do you mean  
18 by that?

19 A. At a high level, that means that Google  
20 performed every step of the claimed invention.

21 Q. And what do you mean when you say Beneficial  
22 accused Google of indirect infringement?

23 A. That Google participated in some way with some  
24 other party or parties to perform the steps of the  
25 claimed invention.

1 Q. Do you know whether DoubleClick ad products  
2 and services were a part of those earlier cases in any  
3 way?

4 A. Yes, ma'am.

5 Q. And what do you mean about that?

6 A. They were -- DoubleClick was used by YouTube  
7 in the underlying cases to provide ads on the YouTube  
8 website. And so there was extensive discovery taken  
9 with DoubleClick in the prior cases.

10 Q. Okay. And when you say there was extensive  
11 discovery, what do you mean by that?

12 A. We -- there were -- there was documentation  
13 from DoubleClick provided to Beneficial, and there was  
14 examination of Google witnesses -- or Google engineers  
15 who worked with DoubleClick.

16 Q. Thank you.

17 And please tell the jury what DoubleClick is.

18 A. DoubleClick is currently a -- a set of  
19 products that Google provides to advertisers to let them  
20 put -- display ads on their websites.

21 Q. Was DoubleClick ever the name of a company as  
22 well?

23 A. Yes, ma'am.

24 Q. All right. Please tell the jury what  
25 DoubleClick was.

1           A.     DoubleClick was a -- it was a company that  
2 Google acquired which closed in about 2008, and they had  
3 their own -- they had their own business, and that was  
4 their business, providing these products.

5           Q.     And the company used to be called DoubleClick,  
6 is that a part of Google in any way today?

7           A.     Yes. They were -- DoubleClick merged with  
8 Google in 2008.

9           Q.     Okay. And when you say merged, does that mean  
10 it's a part of Google?

11          A.     Correct, yes.

12          Q.     Thank you.

13                 Can you describe very generally to the jury  
14 what DoubleClick ad products and services do.

15          A.     DoubleClick is a service that allows customers  
16 to basically select ads and -- and serve ads on  
17 customers' websites. And it takes care of -- it's --  
18 it's -- it's a service so that a publisher with a  
19 website can concentrate on their website, and then  
20 DoubleClick fills in the ad for them.

21          Q.     All right. I'd like to show you Exhibit 23,  
22 which is in your binder.

23                 MS. ANDERSON: And it is also  
24 pre-admitted, so if we could have that displayed.

25          Q.     (By Ms. Anderson) Do you recognize Exhibit 23,

1 Mr. Trinh?

2 A. Give me a second, please.

3 Q. Sure. Take your time.

4 A. Yes, ma'am.

5 Q. What is Exhibit 23?

6 A. Exhibit 23 is portions of the discovery in the  
7 earlier case.

8 Q. And Exhibit 23 is entitled Plaintiff  
9 Beneficial Innovations' Response to Defendant's First  
10 Set of Interrogatories.

11 Would you please tell the jury what an  
12 interrogatory is.

13 A. An interrogatory is the court name for --  
14 well, it's a question that one side can ask to another  
15 in written format.

16 Q. All right. And when it says that Plaintiff --  
17 these are Plaintiff Beneficial Innovations' Response,  
18 what does that mean to you?

19 A. This is Beneficial answering questions from  
20 the Defendants, the group of people that were sued in  
21 the first case.

22 Q. Did you ever review Exhibit 23 as part of your  
23 job responsibilities?

24 A. Yes, ma'am.

25 Q. And why did do you that?

1           A.     It was part of my day-to-day responsibilities,  
2 and I needed to understand the positions that Beneficial  
3 was taking in that first case.

4           Q.     All right.

5                   MS. ANDERSON: I'd like to show the jury,  
6 please, Interrogatory No. 7, which appears on Page --  
7 the second page of the exhibit.

8                   Thank you, Ben.

9           Q.     (By Ms. Anderson) You have Interrogatory No. 7  
10 before you. What is it Interrogatory No. 7? Is it --  
11 is it a question posed by a particular party?

12          A.     Yes, ma'am.

13                  So this is a question posed to Beneficial from  
14 the Defendants in the first case.

15          Q.     All right.

16          A.     And this question, it's here in the -- it's --  
17 asked Beneficial what they're seeking and why.

18          Q.     And when you say what they're seeking, are you  
19 talking about what kind of relief?

20          A.     Correct.

21          Q.     All right.

22                  MS. ANDERSON: Let's turn to the next  
23 page, Page -- the third page of Exhibit 23.

24          Q.     (By Ms. Anderson) What appears here?

25          A.     This is Beneficial's answer to the question

1 posed. And here they respond with what it is they're  
2 seeking in the first lawsuit. There's three paragraphs  
3 here, and it kind of goes through their theories.

4 Q. All right. Did you learn anything from  
5 reviewing Exhibit 23 as to whether or not Google had  
6 been accused of indirect infringement during the course  
7 of that original lawsuit?

8 A. Yes, ma'am.

9 Q. And what did you learn from that review?

10 A. I learned that they were suing us for both  
11 direct and indirect infringement, including contributory  
12 and inducement of infringement, because that was the  
13 basis for seeking an injunction against us.

14 Q. And can you direct the jury where on this page  
15 they should look to see that information?

16 A. Yes, ma'am.

17 Down on the third paragraph right before that  
18 signature line is: In addition, Beneficial Innovations  
19 seeks an injunction restraining and enjoining Defendants  
20 from any further acts of infringement, contributory  
21 infringement, or inducement of infringement of the '366  
22 and '702 patents.

23 Q. Thank you very much.

24 Now, if you would, Mr. Trinh, please turn in  
25 your binder to Exhibit 22.



1 MS. ANDERSON: And may we display this,  
2 please? It is pre-admitted.

3 Thank you.

4 Q. (By Ms. Anderson) Do you recognize Exhibit 22,  
5 Mr. Trinh?

6 A. Yes, ma'am.

7 Q. And what is Exhibit 22?

8 A. Exhibit 22 is another portion of discovery  
9 from the first case. This time -- again, it's an  
10 interrogatory and response.

11 Q. All right. And whose response is it?

12 A. Like the previous exhibit, it's Beneficial's  
13 response to interrogatories, this time from just Google  
14 and YouTube.

15 Q. I'd like to turn to the second page of Exhibit  
16 22.

17 Do you have that before you?

18 A. Yes, ma'am.

19 Q. All right. And what is -- what is shown here  
20 on Page 2?

21 A. So under Interrogatory No. 4, this is the  
22 question that we -- that we posed to Beneficial.

23 Q. All right. And what did you learn from  
24 Beneficial's response to this question?

25 MS. ANDERSON: And let's display it for

1 the jury on the third page of Exhibit 22.

2 A. Yes, ma'am.

3 So we asked Beneficial when they contended  
4 that Google first learned about their -- their '702  
5 patent. And in response, they told us that they  
6 believed that we knew of their patent when they filed  
7 suit in December 2007.

8 Q. (By Ms. Anderson) All right. Thank you.

9 Let's turn our attention to the settlement agreement --

10 A. Yes, ma'am.

11 Q. -- Exhibit 1.

12 Now, Mr. Trinh, did there come a point in time  
13 when Google and Beneficial agreed to the settlement  
14 agreement and had it signed?

15 A. Yes, ma'am.

16 Q. Why did Google enter this agreement?

17 A. At this point, we -- Google had been in  
18 litigation against Beneficial across two lawsuits for a  
19 number of years, and we wanted to put these issues -- we  
20 wanted to get past these issues and put them to bed, and  
21 we wanted to buy a license to kind of resolve -- resolve  
22 things.

23 Q. And for whom did Google want to buy licenses?

24 A. We bought licenses for Google, our affiliates,  
25 like YouTube, and our customers, like NBC Universal.

1 Q. All right. Let's go through and take a look  
2 at some of the parts of the settlement agreement.

3 A. Yes, ma'am.

4 MS. ANDERSON: First, if we can have  
5 highlighted the first paragraph on Page 1.

6 Q. (By Ms. Anderson) What kind of general  
7 information can we learn from looking at the first  
8 paragraph, Mr. Trinh?

9 A. So this is the beginning of the settlement  
10 agreement, and it identifies who are parties to this  
11 agreement.

12 So here you see -- it says: This settlement  
13 and license agreement -- agreement is made between  
14 Beneficial Innovations, and it goes forth and identifies  
15 who's signing this agreement and kind of basic contact  
16 information.

17 So this shows Beneficial, Google, YouTube, and  
18 NBC Universal.

19 Q. All right. Thank you.

20 MS. ANDERSON: Let's go below and show  
21 the jury, please, the recitals section.

22 Thank you.

23 Q. (By Ms. Anderson) Mr. Trinh, what kind of  
24 information is generally reflected in the recital  
25 section?

1           A.     So this section kind of sets forth the context  
2 for this -- for this agreement. It explains that there  
3 had been two lawsuits filed, kind of where those  
4 lawsuits were, and what -- what the parties were doing  
5 in this agreement.

6           Q.     Thank you.

7                     MS. ANDERSON: And let's jump ahead, if  
8 we can, to Section 3, which appears on the third page of  
9 the settlement agreement.

10          Q.     (By Ms. Anderson) What does Section 3  
11 generally cover, Mr. Trinh?

12          A.     Sorry. Let me turn to that.

13          Q.     Sure.

14          A.     Section 3 explains what Google paid to  
15 Beneficial for this license agreement.

16          Q.     All right.

17          A.     And it explains some -- the procedure of how  
18 we would do that and how much and where it would go.

19          Q.     And how much did Google agree to pay to  
20 Beneficial under this agreement?

21          A.     As you can see here, \$2,450,000.

22          Q.     And did Google, in fact, pay that money in  
23 accordance with the terms of this agreement?

24          A.     Yes, ma'am.

25          Q.     Let's turn now to Section 2 entitled Licenses,

1 which appears on the second page of Exhibit 1.

2 A. Yes, ma'am.

3 Q. What kind of information is generally  
4 reflected in the license section?

5 A. This section lays out what Beneficial was --  
6 was -- was giving to Google as a license and sets forth  
7 the kind of -- the -- it sets forth the parameters of  
8 that license.

9 Q. And did the license provide license rights to  
10 Google?

11 A. Yes, in one part.

12 Q. And could you identify for the jury in what  
13 part of the license section we see the license to Google  
14 itself?

15 A. Yes, ma'am.

16 So in the paragraph labeled A, it says:  
17 Beneficial and its affiliates grant a worldwide,  
18 royalty-free, non-exclusive, non-transferable, except as  
19 provided below, close paren, fully paid up, perpetual  
20 license under the licensed patents to -- little --  
21 little subsection 1 -- Google, YouTube, NBC Universal,  
22 Defendants, and their past, current, and future  
23 affiliates, including a license for prior activities of  
24 future affiliates.

25 Q. And where it says licensed patents in the

1 section you just read, what patents are included in the  
2 definition of licensed patents?

3 A. So to find that out, we need to turn to the  
4 back of this settlement agreement where you see  
5 Attachment A, and Attachment A lists the patents that  
6 Beneficial licensed under this agreement.

7 And so the first line is, for example, U.S.  
8 Patent No. 6,712,702.

9 Q. And where do we see the '943 patent in that  
10 license?

11 A. If you go down a couple of lines to -- about  
12 five lines down, that's Patent No. 7,496,943.

13 Q. Thank you.

14 MS. ANDERSON: If we could just highlight  
15 that for the jury briefly.

16 Thank you.

17 Q. (By Ms. Anderson) Now, Attachment, is that  
18 referenced in any definition in the settlement agreement  
19 identifying what a licensed patent is?

20 A. Yes, ma'am.

21 If we -- if we turn back to the first page of  
22 the license, we'll see in Section 1, which is labeled  
23 Definitions, it contains -- it's like the dictionary of  
24 this agreement. It says -- under Section C, it says:  
25 Licensed patents shall mean...

1           And in Subsection 1, it says: The patents and  
2 patent applications identified in Attachment A,  
3 parentheses, the portfolio patents.

4           Q.     And is Attachment A what we were just looking  
5 at?

6           A.     Yes, ma'am.

7           THE COURT: Let me interrupt at this  
8 point. This is a good place, ladies and gentlemen, for  
9 us to take a short recess.

10                  So I'm going to excuse you to the jury  
11 room in just a couple of minutes to stretch your legs,  
12 get a drink of water. Don't expect you to be out long,  
13 so you may leave your juror notebooks in your chairs, if  
14 you like.

15                  Don't discuss the case among each other,  
16 and we'll be back in here shortly and continue with this  
17 direct examination. But you're excused to the jury room  
18 for recess at this time.

19                  COURT SECURITY OFFICER: All rise.

20                  (Jury out.)

21           THE COURT: All right. Counsel, we stand  
22 in recess. Try to make this about 10 minutes, as close  
23 as we can. We'll be back in here shortly. We're in  
24 recess.

25           MS. ANDERSON: Thank you, Your Honor.

1 (Recess.)

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 If you want to return to the podium,

6 Ms. Anderson.

7 MS. ANDERSON: Thank you, Your Honor.

8 THE COURT: And, Mr. McAteer, if you'll  
9 bring in the jury.

10 COURT SECURITY OFFICER: Yes, sir.  
11 All rise for the jury.

12 (Jury in.)

13 THE COURT: Be seated, please.

14 We'll continue with the direct  
15 examination of the witness by the Plaintiff.

16 You may proceed, Counsel.

17 MS. ANDERSON: Thank you, Your Honor.

18 Q. (By Ms. Anderson) Let's return to Exhibit 1,  
19 Mr. Trinh.

20 A. Yes, ma'am.

21 Q. And if we can, show for the jury Section 2,  
22 the license section. And we were discussing in your  
23 earlier testimony Section 1, and you were describing  
24 Google's license.

25 And just briefly, can you tell the jury what



1 it is -- what it means to have a license to a patent, at  
2 a very general level?

3 A. In general, it means permission to use the  
4 inventions described in the patent.

5 Q. And when there are terms or conditions  
6 associated with that license, do those limit the license  
7 in particular ways?

8 A. Yes, ma'am.

9 Q. All right. So let's read on in Section A of  
10 the license provision.

11 Is there a section of the license provision  
12 that talks about licenses that apply to Google  
13 customers?

14 A. Yes, ma'am. In the same section, 2-A, if you  
15 go to the paragraph further down in subsection (ii), it  
16 continues on -- it starts with the same sentence that  
17 begins with -- in subsection (i), and continues in  
18 subsection (ii): Defendants and their affiliates' past,  
19 current, and future partners, whether direct or  
20 indirect.

21 Stop for a second.

22 The term partners is defined in Section 1  
23 again.

24 Q. All right. And there's a lot of language in  
25 this section, but could you walk the jury through it to

1 understand as a general matter what is contained in this  
2 section of the license for Google customers?

3 A. Sure. So let me just start with the  
4 definition of partners. If you could turn to Section  
5 1-B, on the first page, it defines partners. And it  
6 says: Partners shall mean as to a particular person or  
7 entity, their agents, representatives, suppliers,  
8 distributors, customers, advertisers, and users, whether  
9 direct or indirect.

10 Q. Thank you.

11 A. And then going on, the -- the text of this  
12 license grant to the partners, which includes customers,  
13 reads: But only to the extent of that partner's role in  
14 making, having made, using, selling, offering for sale,  
15 or importing any products or services of Defendants or  
16 their affiliates.

17 Q. And if I could just stop you there, Mr. Trinh.  
18 I apologize.

19 Just for clarity, when it's talking about  
20 Defendants, does that or does that not include Google?

21 A. That includes Google. Actually the defined  
22 term in Section A, that includes Google, YouTube, and  
23 NBC Universal.

24 Q. All right. And let's continue on, then. I  
25 apologize. Picking up where you left off after

1 affiliates.

2       A.     Yes.   And then it continues:   And only to the  
3 extent such act by such partner would constitute direct  
4 or indirect infringement of a claim of the licensed  
5 patents by the Defendants -- or by Defendants or their  
6 affiliates but for this license.

7       Q.     All right.   Now, for clarification, do Google  
8 customers have the right to use the inventions under  
9 this provision, if they're not using Google products and  
10 services?

11       A.     This license does not cover that.   No, ma'am.

12       Q.     So please tell the jury, why would Google pay  
13 for a license for its customers as part of this  
14 agreement?

15       A.     This -- this license is designed to, as part  
16 of this entire agreement -- designed to buy peace or a  
17 resolution as to the Beneficial patents for Google  
18 products, wherever they're found on our websites with  
19 our partners, and the hands of our users.   It's designed  
20 to put it all to rest.

21               And it's regardless of whether products or  
22 services as long as they're ours, they're -- it's  
23 covered under this license as long as it meets these  
24 conditions set forth here.

25       Q.     Thank you.

1           And let's go on to Sections 4 and 5 of the  
2 agreement. Can you generally identify for the jury just  
3 as a general level what are covered in these sections?

4           A. Sure. So if you turn to the next page, on  
5 Page 3 -- I'll take each section in turn. Section 4 is  
6 entitled Dismissal of the Action. And that language  
7 sets forth the procedure by which how Beneficial and  
8 Google would work to dismiss the ongoing court cases  
9 that were pending at that time.

10           Section 5 is entitled Release, and it --  
11 basically, it's the language that sets up how Beneficial  
12 and the Defendants were going to release each other in a  
13 mutual fashion.

14           Q. All right. Thank you.

15           And let's go on to Section 15. Can you  
16 explain to the jury generally what is covered in  
17 Section 15? And it starts at the bottom of one page and  
18 goes on to the next.

19           A. Yes, ma'am. If you keep on turning and get to  
20 Page 6, and it's at the very, very bottom of Page 6  
21 where the title starts, it's entitled No Admission of  
22 Liability.

23           And the text continues to read: Nothing in  
24 this agreement shall constitute an admission of patent  
25 infringement, validity, or enforceability by Google,

1 YouTube, or NBC Universal but rather as merely the  
2 resolution of disputed charges of patent infringement by  
3 agreement.

4 Q. Thank you very much.

5 And was this part of the provisions that had  
6 been included in the settlement agreement?

7 A. Yes, ma'am.

8 Q. All right. Let's move forward in time from  
9 2010, the time of the settlement agreement.

10 After 2010, do you know whether Beneficial  
11 sued Google customers over the '702 and '943 patents?

12 A. I do.

13 Q. And what do you know in that regard?

14 A. Beneficial did in about May -- or April of  
15 2011.

16 Q. How did you come to learn that Beneficial sued  
17 Google customers over those patents in 2011?

18 A. The customers came complaining to me.

19 Q. I'd like to show you Exhibits 2 through 4 in  
20 your binder, and let's not put it up quite yet, because  
21 we're going to focus on Exhibit 2. But I'd like to ask  
22 you to look at Exhibit 2 through 4, and we'll show them  
23 one at a time.

24 A. Yes, ma'am. Exhibits 2 through 4 are the  
25 complaints that Beneficial filed against Google

1 customers and others in April of 2011.

2 Q. All right.

3 MS. ANDERSON: Now, if we can show,  
4 please, on the screen Exhibit 2, the cover of Exhibit 2.

5 Q. (By Ms. Anderson) Is this one of the 2011  
6 complaints that we're -- you just referred to?

7 A. Yes, ma'am. This is the -- this is the first  
8 version of it.

9 Q. All right. On the first page of Exhibit 2, we  
10 see on the left-hand a box with Beneficial Innovations,  
11 Inc., Plaintiff, versus and then a long list of  
12 companies.

13 What is that list of companies a list of?

14 A. So this is -- you can call this -- the case  
15 caption and it kind of sets up the position of the  
16 parties in the lawsuit. At the top is Beneficial  
17 Innovations, Inc., which is the Plaintiff. Below it is  
18 the list of companies which are labeled as Defendants,  
19 and so that shows you that, you know, companies starting  
20 with Advance Media going all the way to Village Voice  
21 Holdings, LLC, are who Beneficial is suing in this  
22 matter.

23 Q. Do you know from your work at Google whether  
24 in 2011, the time of this suit, any of those companies  
25 listed were customers of Google's DoubleClick product?

1 A. Yes, ma'am.

2 Q. And what do you know in that regard?

3 A. So the parties, starting with Advance  
4 Publications, Inc., ALM Media Properties, LLC, American  
5 Media, Inc., Autotrader.com, Inc., and Demand Media,  
6 Inc., were DoubleClick customers and are DoubleClick  
7 customers.

8 Q. Did Google seek to contact Beneficial in any  
9 way about the 2011 lawsuit, when it learned about that  
10 lawsuit against Google customers?

11 A. Yes, we did.

12 Q. And did Google make any request of Beneficial  
13 in that connection?

14 A. We contacted Beneficial to make sure that they  
15 were honoring the agreement and not suing our customers  
16 for their use of -- for our customers' use of our  
17 products.

18 Q. And what did Google learn?

19 A. We learned that Beneficial wasn't -- wouldn't  
20 commit that they weren't suing our customers. They --  
21 they left the issue up in the air, and they told us  
22 they -- they -- they told us they would be -- that they  
23 weren't excluding our products from their case.

24 Q. Okay. Would Beneficial agree, in response to  
25 that contact, to confirm that they were not suing Google

1 customers for their use of Google products in the way  
2 described in the license?

3 A. They would not do that for us.

4 Q. So what did Google do next?

5 A. We -- we then intervened in this case to -- to  
6 insert ourselves into this lawsuit.

7 Q. Can you explain to the jury what you mean by  
8 intervened in this case?

9 A. Sure. Intervention is a court procedure  
10 where -- a third party like Google can become involved  
11 in a lawsuit.

12 Q. Now, as -- as part of becoming a part of the  
13 current lawsuit, did Google take a position as to  
14 whether or not it believed its customers were infringing  
15 the '702 or '943 patents?

16 A. We did.

17 Q. And what was that position?

18 A. We took the position that our customers did  
19 not infringe because they were licensed.

20 Q. All right. I'd like to show you Exhibits 8  
21 and 9 in our binder.

22 MS. ANDERSON: And actually before we do  
23 that, actually so the jury can see all the exhibits, 2,  
24 3, and 4 -- we looked at Exhibit 2 -- just quickly, can  
25 we display for the jury Exhibit 3, which is preadmitted?



1 Q. (By Ms. Anderson) Is this one of the  
2 amendments to the 2011 lawsuit?

3 A. Yes. This is the first one after Exhibit 2.

4 MS. ANDERSON: And if we can please show  
5 Exhibit 4, also preadmitted.

6 A. And this is the subsequent amendment to the  
7 first and second -- or Exhibit 2 and Exhibit 3.

8 Q. (By Ms. Anderson) So just to -- for clarity  
9 for the record, what is Exhibit 4?

10 A. Exhibit 4 is the second amended complaint that  
11 Beneficial filed, so it kind of replaces Exhibit 2 and  
12 3, but it still here lists Beneficial, Inc. --  
13 Beneficial Innovations, Inc., Plaintiff, V the  
14 Defendants in that -- in that matter.

15 Q. All right. Now, let's turn to Exhibit 8 and  
16 9, and we'll start with Exhibit 8.

17 MS. ANDERSON: If we can display the  
18 front page of Exhibit 8 as it is preadmitted.

19 Q. (By Ms. Anderson) Mr. Trinh, what is -- do you  
20 recognize Exhibit 8?

21 A. Yes, ma'am.

22 Q. And what is it?

23 A. This is Beneficial's infringement contentions  
24 in its case against the -- the Google customers. We've  
25 previously discussed these infringement contention

1 documents, but it's where Beneficial lays forth their  
2 specific theory of why they think the customers  
3 infringed our patents.

4 Q. All right. And I'd like to then have you turn  
5 to Exhibit 9 in your binder.

6 MS. ANDERSON: And if we can display that  
7 as it is preadmitted.

8 Q. (By Ms. Anderson) Do you recognize Exhibit 9?

9 A. Yes, ma'am.

10 Q. What is Exhibit 9?

11 A. This is the -- this is the supplement to the  
12 previous document that we talked about that, again,  
13 contains Beneficial's theories -- theories of  
14 infringement against the Google customers.

15 Q. And which of Exhibits 8 or 9 is later dated?

16 A. 9.

17 Q. All right. Did you review Exhibits 8 and 9 in  
18 connection with your responsibilities at Google?

19 A. Yes, ma'am.

20 Q. And these are quite long documents. Can you  
21 please -- please explain to the jury at a high level how  
22 Exhibit 9 is organized.

23 A. Sure.

24 So Exhibit 9 and Exhibit 8 follows the same  
25 format. It's -- it is indeed lengthy but has a couple

1 different sections.

2           So in the first couple of pages of -- the  
3 first three pages of Exhibit 9, Beneficial explains  
4 which claims of the asserted patents are -- are the  
5 heart of their allegations.

6           And so it goes through on Defendant by --  
7 party-by-party basis and -- and explains exactly which  
8 claim of each patent they're asserting against each  
9 Defendant.

10           In total, it's Claim 53 of the '702 patent,  
11 and Claims 1, 49, and 67 of the '943 patent.

12           The second section of this -- of this document  
13 explains -- is where Beneficial explains what -- what  
14 websites infringe -- are they accusing of infringing our  
15 patent.

16           So it goes on for a couple of pages, but it  
17 explains which websites they're accusing of  
18 infringement.

19           Now, that goes on for maybe 40 or so pages.  
20 There's a couple more sections, but at the end starting  
21 at Page 50 or so is where -- is a lengthy appendix, but  
22 it's where they -- it's where Beneficial lays out the  
23 accused claims or alleged claims and it puts them in a  
24 chart.

25           On the left side of the chart is the text of

1 the patent. And so on Page -- it's labeled A1, but it's  
2 about 50 pages deep or so. It starts going through  
3 Claim 53 of the '702 patent.

4 Now, on the left side is the language from the  
5 patent, and on the right side is what Beneficial is --  
6 is alleging satisfies that claim.

7 And as you go through these pages, it goes  
8 through and picks up different elements, different  
9 sections of the claim special puts them on the left and  
10 puts what they say infringes on the right.

11 Q. Thank you.

12 Now, just, again, whose words are contained in  
13 this document?

14 A. These are Beneficial's.

15 Q. And did you review the infringement  
16 contentions with care, Exhibits 8 and 9?

17 A. Yes, ma'am.

18 Q. Why did you do that?

19 A. This -- this combined with the complaint is my  
20 best way of understanding what's at issue in this case.

21 It's -- it tells me what claims are at issue  
22 and what's accused of infringement and why. It's how --  
23 it's what and why.

24 Q. All right. Thank you.

25 Now, after reviewing Exhibits 8 and 9, did you

1 have an understanding about whether or not Beneficial  
2 was accusing Google customers for their use of Google ad  
3 products and services in doing advertising?

4 A. Yes, ma'am.

5 Q. And what did you believe to be correct about  
6 that -- actually, let me rephrase that.

7 What did you understand from reviewing  
8 Beneficial's infringement contentions in Exhibits 8 and  
9 9?

10 A. Yes, ma'am.

11 This confirmed my understanding that  
12 Beneficial's infringement allegations are so broad as to  
13 encompassing things that we instructed and encouraged  
14 our customers to do. And it did not contain any  
15 exclusion to account for the license that we had agreed  
16 to.

17 Q. Now, is there anyplace in Exhibits 8 and 9  
18 where Beneficial specifically says that it is  
19 specifically accusing Google customers for their  
20 specific use of DoubleClick advertising products and  
21 services to do advertising?

22 A. No, ma'am.

23 Q. Okay. And so, again, why do you believe that  
24 these allegations and what covered -- strike that.

25 Why do you believe that Beneficial was

1 accusing Google customers of infringement for use of  
2 DoubleClick ad products and services?

3 A. They were accusing DoubleClick customers,  
4 while they didn't include the DoubleClick name, they --  
5 they were describing these broad contentions, what  
6 DoubleClick did and what we told our customers to do  
7 with DoubleClick.

8 Q. Are you able to give the jury an example from  
9 the infringement contentions to describe why you thought  
10 the accusations were broad in nature?

11 A. Yes, ma'am.

12 In the exhibit -- can we go to Page -- on the  
13 bottom, it's labeled 831.

14 Q. Okay. And which exhibit would you like, 8 or  
15 9?

16 A. 9 is okay, since it's the later-in-time one.

17 Q. Thank you.

18 A. So there we go.

19 Here again, we see one of the detailed pages  
20 from the appendix. And the format again is on the left.  
21 You see the -- the text from the patent, and on the  
22 right, you see what Beneficial is saying about -- about  
23 what infringes this element.

24 And actually, I should apologize, this element  
25 starts at 830 and then leads into 831.

1           You know, what caught my eye here was, they  
2 were explaining that -- on the right side, again, is  
3 what Beneficial says infringes their patent.

4           And here it reads: The only practical way for  
5 a web portal or website to concurrently display a  
6 service representation and -- and an advertising  
7 presentation at a first network accessible node is to --  
8 and then they go on and list elements from the patent,  
9 but I'll read it here -- combine the data associated  
10 with or connected in some way with the advertising  
11 presentation with code associated with or connected in  
12 some way with a service display representation and so  
13 on, and the section continues.

14           Q.     Thank you.

15           And would you please describe to the jury,  
16 what is Google's intention as to how DoubleClick ads and  
17 services should be used?

18           A.     DoubleClick is about letting third-party  
19 websites put up ads on their website and serving it for  
20 them. That's what we intend them to select and display  
21 ads on, on a third-party website.

22           Q.     Thank you.

23           Is there any relationship between what Google  
24 intends its customers to do and what Beneficial  
25 describes as its view of what is infringing of the

1 patents in Exhibits 8 and 9?

2 A. Yes, ma'am.

3 Q. What is that relationship?

4 A. Beneficial's theories of infringement  
5 encompass everything that we tell DoubleClick customers  
6 to do and, in fact, go far broader than them.

7 Q. I'd like to show you Exhibit 12 in your  
8 binder. If you would please turn to that.

9 MS. ANDERSON: And it is pre-admitted.  
10 If we can display that, please.

11 THE COURT: Counsel, we're not exhibiting  
12 any exhibits that aren't pre-admitted, so you don't need  
13 to reference it's pre-admitted every time.

14 MS. ANDERSON: I apologize, Your Honor.  
15 Thank you.

16 THE COURT: Not a problem.

17 Q. (By Ms. Anderson) Mr. Trinh, do you recognize  
18 Exhibit 12?

19 A. Yes, ma'am.

20 Q. What is this?

21 A. This is another portion of discovery, but this  
22 time it's from this -- the current case. Like the --  
23 the past exhibits, it's -- it's interrogatories from  
24 Google to Beneficial --

25 Q. And --



1           A.     -- and their responses.

2           Q.     -- when you say the current case, which case  
3 are you talking about?

4           A.     The case against -- that Beneficial instituted  
5 against our customers.

6           Q.     Is that the one from 2011?

7           A.     Yes, ma'am.

8           Q.     Now, what kind of document is Exhibit 12?

9           A.     So this is a document from the Court discovery  
10 procedure, and this document is Beneficial's responses  
11 to some written questions -- or to a written question  
12 from Google.

13          Q.     Where in Exhibit 12 do we see what question  
14 Google posed to Beneficial?

15          A.     If you turn to the next page, you'll see  
16 Interrogatory No. 1, and that's the question that --  
17 that Google posed to Beneficial.

18          Q.     And would you describe to the jury, in  
19 general, what was the question posed to Beneficial in  
20 Exhibit 12?

21          A.     Sure. So the -- excuse me -- the  
22 interrogatory reads: To the extent that Beneficial  
23 contends that the accused Google partners infringe any  
24 claims of the patent-in-suit, acknowledge whether that  
25 contention is based on the use of any advertising

1 present -- advertising presentation, products, or  
2 services provided by Google and specifically identify  
3 the product or service provided by Google that  
4 Beneficial intends to rely on to show infringement by  
5 any accused Google partner.

6           Basically --

7           THE COURT: Mr. Trinh, I know you're  
8 reading, but you're going about 90 miles an hour.

9           THE WITNESS: I apologize.

10           THE COURT: Your actual testimony has  
11 slowed down quite nicely, but just remember you need to  
12 read at the same speed you testify.

13           THE WITNESS: Yes, sir.

14           MS. ANDERSON: Thank you.

15           Q. (By Ms. Anderson) So did you review Exhibit 12  
16 in the course of your responsibilities at Google?

17           A. Yes, ma'am.

18           Q. Did you review the response given by  
19 Beneficial to Google's question?

20           A. Yes, ma'am.

21           Q. Can -- where -- where do we see that located  
22 in here?

23           A. If we turn to the next page, please, this --  
24 we have a paragraph here that begins with: Plaintiff  
25 responds as follows.

1           Q.     And what did you learn from reviewing  
2 Beneficial's response about what was its position as to  
3 whether or not it was suing Google customers for the use  
4 of Google products?

5           A.     I learned that Beneficial would not -- was not  
6 excluding Google products or services. They were not  
7 excluding DoubleClick.

8           Q.     What about the response led you to that  
9 conclusion?

10          A.     So this paragraph -- in this paragraph, they  
11 explained that their contentions are based -- their  
12 infringement theories are based on the use of  
13 advertising presentations.

14                 And the answer is -- and it goes on to read:  
15 This contention is not based specifically on their use  
16 of any particular Google product or service or more  
17 generally on the use of any particular ad server  
18 technology.

19                 And then it goes on, but at the end, it says:  
20 Whether the advertising presentations are served by  
21 Google, some other third party, or by the Defendant  
22 itself does not change the analysis.

23                 This was Beneficial's position.

24           Q.     Now, has Google itself done analysis of  
25 whether its customers sued in 2011 were actually using

1 the '702 or '943 patent inventions on their websites?

2 A. No, ma'am.

3 Q. Why hasn't Google done that?

4 A. Because they're licensed.

5 Q. Okay. And what, if any, relationship did  
6 Beneficial's statements about what it believed was  
7 covered by its inventions have to Google's decision to  
8 not -- to do an analysis of customer products?

9 A. Beneficial's infringement allegations were so  
10 broad that they encompassed what our DoubleClick  
11 customers did and what we instructed them and -- and  
12 helped them do.

13 Q. Thank you.

14 Do you have a view as to whether or not  
15 Beneficial breached the settlement agreement with  
16 Google?

17 A. Yes, I do.

18 Q. What is your view?

19 A. Absolutely.

20 Q. Why do you believe that?

21 A. By suing our customers for the use of our  
22 products, they deprived -- they deprived us of the peace  
23 and the resolution that we bargained for. They -- if  
24 these products actually infringed, they would be  
25 licensed. If they weren't, there'd be no reason to sue

1 them.

2 Q. In your experience working with Google,  
3 can dealing with lawsuits be disruptive to businesses?

4 A. Yes, ma'am.

5 Q. Now, you have an understanding as to whether  
6 or not Beneficial ended up resolving or settling some of  
7 its claims against some of the sued Google customers?

8 A. I -- I am aware.

9 Q. And what is your understanding?

10 A. My understanding is they -- the customers in  
11 this case have settled.

12 Q. Does that affect your view in any way as to  
13 whether or not Beneficial breached the contract with  
14 Google?

15 A. Not at all.

16 Q. And why is that?

17 A. The customers should never have been sued in  
18 the first place, if they didn't -- if their use of our  
19 products didn't actually infringe.

20 Q. And, again, are you -- are you taking the  
21 position that Beneficial couldn't sue Google customers  
22 for the use of other company's products?

23 A. Not under our license, no.

24 Q. Now, do you have knowledge as to approximately  
25 how many hours of employee time Google has spent devoted

1 to dealing with Beneficial's 2011 lawsuit against  
2 customers?

3 MR. ADAMS: Your Honor, objection. May  
4 we approach?

5 THE COURT: You may approach.

6 (Bench conference.)

7 MR. ADAMS: Your Honor, the objection is  
8 that this question is beyond the scope of anything  
9 that's been disclosed in this case. To the extent --  
10 and I think this is going to show either harm or  
11 damages, Your Honor.

12 They have never made any theory of harm  
13 or damages that's related at all to the time spent by  
14 any employee on this. In fact, their initial position  
15 was they were trying to get damages based on the  
16 attorneys' fees that they incurred in bringing this  
17 lawsuit.

18 Judge Payne has dismissed that from the  
19 case. So I just -- I didn't want this question to be  
20 answered.

21 THE COURT: What's the relevance,  
22 Counsel?

23 MS. ANDERSON: Your Honor, the disruptive  
24 nature of the lawsuits, that Google employees have been  
25 dealing with this when they should not have because of

1 the peace they bought through the settlement agreement.

2 THE COURT: So you're not -- you're not  
3 offering this to support some kind of monetary amount of  
4 damages?

5 MS. ANDERSON: Not at all in any way,  
6 Your Honor.

7 MR. ADAMS: Your Honor, harm under the  
8 contract -- we asked them in discovery, provide us with  
9 how you've been harmed or damaged. They've only  
10 provided us with one theory, Your Honor, and that's  
11 because they've paid fees to allow them now to suggest  
12 some measure of harm that's based on a theory they've  
13 never disclosed.

14 THE COURT: Has that theory been  
15 disclosed?

16 MS. ANDERSON: Well --

17 THE COURT: Business disruption?

18 MS. ANDERSON: Business disruption as a  
19 theory of damages, no, because we're not seeking that.

20 THE COURT: That's a theory of harm.

21 MS. ANDERSON: It's a theory of harm.  
22 I'm not aware of what Mr. Adams is referring to, but  
23 what we have said consistently and said it in the last  
24 hearing with Judge Payne is, the problem with what has  
25 happened is the depravation of peace. Whether or not

1 there's harm, we're only seeking 1 dollar of damage.  
2 So whether or not harm -- if the jury finds there's a  
3 breach, we're entitled to recover \$1 under that  
4 particular provision of California law.

5           So it is -- it is explaining to the jury  
6 that there has been a breach because we did not have the  
7 litigation peace that we bargained for here.

8           MR. ADAMS: Your Honor, just -- again,  
9 there are two issues. One is damages; one is harm.  
10 They have never disclosed -- and we've asked them to  
11 describe how you've been harmed, because that's an  
12 element of the breach-of-contract claim.

13           They have never disclosed an element of  
14 harm as the disruption of business. They've always  
15 pointed to their attorneys' fees in every discovery  
16 response in their disclosures.

17           This is the first time, Your Honor,  
18 they're disclosing to us that disruption of business  
19 environment is a measure of harm. In fact, Your Honor,  
20 just like I -- I thought they were going another route.  
21 I thought they were going to say that getting the  
22 indemnity letters -- because that was a dispute that we  
23 had with the Court as to whether or not they disclosed  
24 the indemnity letters to us timely, and we've --

25           THE COURT: Let's not talk about what you



1 thought. The question is --

2 MR. ADAMS: This has never been brought  
3 to our attention, Your Honor.

4 THE COURT: The question, Ms. Anderson,  
5 has the disruption of Google's business been disclosed  
6 to the Defendant as a basis for you meeting your burden  
7 of proof that harm has resulted from the alleged breach?

8 MS. ANDERSON: I can't say that I know  
9 off the top of my head a question about harm that has  
10 been responded to with that information.

11 THE COURT: Unless -- unless somebody can  
12 represent to me affirmatively that it's been disclosed,  
13 then to avoid the possibility of an ambush or  
14 sandbagging, I'm going to sustain the objection.

15 MS. ANDERSON: Okay. Thank you, Your  
16 Honor.

17 THE COURT: Okay.

18 MS. ANDERSON: Thank you.

19 (Bench conference concluded.)

20 THE COURT: All right. That's -- that  
21 objection is sustained based on the bench conference.

22 Let's proceed.

23 MS. ANDERSON: Thank you, Your Honor.

24 Q. (By Ms. Anderson) Mr. Trinh, you said earlier  
25 that Google learned about the 2011 because of certain

1 complaints.

2 A. Yes, ma'am.

3 Q. I'd would like to draw your attention to  
4 Exhibit 31.

5 MS. ANDERSON: If we could display that,  
6 please.

7 Q. (By Ms. Anderson) What is Exhibit 31?

8 A. It's a complaint letter from one of -- from  
9 the lawyers for one of our customers.

10 Q. And which customer was that?

11 A. This would be Advance.

12 Q. Was Advance one of the companies sued in the  
13 2011 lawsuit?

14 A. Yes, ma'am.

15 Q. And would you identify for the jury the date  
16 of the letter?

17 A. It's here on the top right, May 20th, 2011.

18 Q. Did you have any job responsibilities related  
19 to this letter?

20 A. Yes, ma'am.

21 Q. I'd like to now turn, please, to Exhibit 32 in  
22 your binder. Do you recognize Exhibit 32?

23 A. Yes, ma'am.

24 Q. What is Exhibit 32?

25 A. This is another complaint letter from

1 customers sued in this case.

2 Q. Which customers sent this complaint letter?

3 A. This is a joint complaint letter from Advance  
4 Publications, ALM Media Properties, American Media,  
5 Inc., and Autotrader.com, Inc.

6 Q. Okay. And would you please identify for the  
7 jury the date of the letter.

8 A. Yes, ma'am. June 29th, 2011.

9 Q. And to whom was it addressed?

10 A. That's -- that's me right there --

11 Q. Okay.

12 A. -- Michael Trinh.

13 Q. Now, would you please turn to Exhibit 37?

14 A. Yes, ma'am.

15 Q. What is this exhibit?

16 A. This is another complaint letter from a  
17 customer.

18 Q. All right. And which customer sent this  
19 Exhibit 37?

20 A. This is outside counsel for Autotrader.com.

21 Q. All right. And to whom was this letter  
22 addressed?

23 A. Jennifer Polse.

24 Q. Okay. And what is the date of the letter for  
25 the jury?

1 A. This is September 19th, 2013.

2 MS. ANDERSON: I have no further  
3 questions, Your Honor.

4 Thank you.

5 THE COURT: You pass the witness?

6 MS. ANDERSON: Pass the witness. Thank  
7 you.

8 THE COURT: Cross-examination by the  
9 Defendant.

10 MR. ADAMS: Yes, Your Honor.

11 MR. RAMBIN: May I approach, Your Honor?

12 THE COURT: You may approach.

13 (Pause in proceedings.)

14 MR. ADAMS: Your Honor, may I proceed?

15 THE COURT: You may proceed, Counsel.

16 CROSS-EXAMINATION

17 BY MR. ADAMS:

18 Q. Mr. Trinh, good afternoon.

19 A. Good afternoon.

20 Q. We've met before, correct?

21 A. Yes, we have.

22 Q. In fact, during the underlying litigation, you  
23 and I participated in some of the discussions with the  
24 settlement of the lawsuit, correct?

25 MS. ANDERSON: Objection, Your Honor.

1 Motion in limine.

2 THE COURT: Approach the bench, Counsel.

3 (Bench conference.)

4 THE COURT: Specifically, what is it,  
5 Counsel?

6 MS. ANDERSON: There's an agreed upon  
7 motion in limine there will be no discussions about  
8 negotiation of the settlement agreement.

9 I believe that was the tenor of your  
10 question.

11 MR. ADAMS: And I appreciate the  
12 objection, Your Honor. I don't intend to get into those  
13 conversations.

14 THE COURT: You're just identifying that  
15 you had the conversation?

16 MR. ADAMS: Yes, yes.

17 THE COURT: Unless he's going to ask  
18 questions about the substance of the discussion, I think  
19 we're fine.

20 MS. ANDERSON: Thank you, Your Honor.

21 MR. ADAMS: Thank you.

22 THE COURT: Let's move along.

23 (Bench conference concluded.)

24 THE COURT: All right. Let's go forward.

25 MR. ADAMS: Thank you, Your Honor.

1 Q. (By Mr. Adams) Would you consider yourself a  
2 patent lawyer, Mr. Trinh?

3 A. Of sorts.

4 Q. By of sorts, you mean you're familiar with the  
5 procedural rules that apply in patent litigation, right?

6 A. Yes, sir.

7 Q. Because your role at Google is that you manage  
8 and oversee their litigation matters, including the  
9 patent litigation, right?

10 A. I did, but yes.

11 Q. Well, you did at the time that -- when you  
12 started in Google at the 2008 timeframe?

13 A. Yes, sir.

14 Q. Does Google file its own patent infringement  
15 cases?

16 A. Very rarely, but yes.

17 Q. Have they done so in the time that you were  
18 overseeing patent litigation matters?

19 A. No.

20 Q. Are you familiar with any of their patent  
21 litigation cases that they filed?

22 A. No.

23 Q. Based on your sort of understanding of the  
24 procedural rules, do you understand how sort of a patent  
25 case starts, right?

1 A. Yes, sir.

2 Q. And it starts with a patent owner filing a  
3 complaint against a potential infringer, right?

4 A. Yes, sir.

5 Q. Do you -- is it your testimony that a  
6 complaint that makes allegations in a patent case  
7 establishes that the accused Defendant is, in fact,  
8 infringing?

9 A. No, it's not my belief.

10 Q. You know the opposite of that, right?

11 A. Can you explain?

12 Q. Sure. You know that the allegations in the  
13 complaint says absolutely nothing about whether or not  
14 those allegations are true, right?

15 A. That's not right.

16 Q. Sir, you understand that the mere fact that a  
17 Plaintiff files a complaint that says that a product is  
18 being infringed says nothing about whether or not that  
19 product actually is infringing, right?

20 A. No.

21 Q. The complaint allegations merely state what  
22 the patent holder believes to be the case at a  
23 particular period of time, right?

24 A. That's true.

25 Q. Now, in the case of the lawsuit regarding the

1 '702 and the '943 patent, you know that when the  
2 complaint was filed, it was done at a time when the  
3 patent holder did not receive any documents or discovery  
4 about how, for example, Google's system worked, right?

5 A. Yes, sir.

6 Q. In fact, Google's documents, the ones that  
7 show how their website operates, those are confidential  
8 documents, right?

9 A. Yes, sir.

10 Q. So the only way for -- for example, Beneficial  
11 Innovations to actually know if your website is  
12 infringing is to get your confidential information,  
13 right?

14 A. No.

15 Q. Why do you say no to that?

16 A. Because a Plaintiff is -- can go to publicly  
17 available sources of information and do its own  
18 investigation before filing suit.

19 Q. And you understand, sir, that that's, in fact,  
20 what happened in this case, right?

21 A. Yes, sir.

22 Q. Well, you understood that when the complaint  
23 was filed, the complaint was based on the information  
24 that was publicly available to Beneficial Innovations  
25 about how Google's website worked and how all of the



1 other websites worked, right?

2 A. Yes, sir.

3 Q. You also know that one of the allegations in  
4 this -- withdrawn.

5 One of the elements in one of the claims had  
6 to do with computer code that was being used at a  
7 particular website, right?

8 A. Yes, sir.

9 Q. That information is information that's  
10 confidential to Google, correct?

11 A. In the case of Google, yes, sir.

12 Q. So in order for Beneficial to actually know  
13 whether or not Google infringed, Beneficial needed to  
14 get Google's internal confidential documents in order to  
15 actually prove infringement, true?

16 A. Yes, sir.

17 Q. Because of that, when Google -- when  
18 Beneficial filed its complaint, are you suggesting to  
19 the jury that Beneficial's mere allegations established  
20 at that moment that Google was infringing?

21 A. No, sir.

22 Q. In fact, even today, Google denies that it  
23 infringes any of Beneficial's patents, right?

24 A. Correct.

25 Q. And this is after Google has not only seen the

1 complaint, not only seen the infringement contentions,  
2 but Google has actually had the ability to look at  
3 expert reports that have been done by experts that  
4 analyze your system and the patent, and Google believes  
5 that it doesn't infringe the patent, right?

6 A. Yes, sir.

7 Q. Knowing that, sir, you are not telling this  
8 jury that one -- withdrawn.

9 You understand that in order for Beneficial to  
10 have breached the settlement agreement, it has to be the  
11 case that Google providing DoubleClick to its customers  
12 would constitute indirect infringement by Google, right?

13 A. Yes, sir.

14 Q. In order for Google to be -- to be indirectly  
15 infringing, there has to be some finding of somebody,  
16 some website that's actually infringing, right?

17 A. I don't believe that to be the case.

18 Q. All right. Let's put it this way: As you sit  
19 here today, Mr. Trinh, you have zero evidence of any  
20 website that's actually infringing either the '702  
21 patent or the '943 patent, correct?

22 A. No, sir.

23 Q. You have evidence of infringement?

24 A. Yes, sir.

25 Q. The evidence that you have, Mr. Trinh, that's

1 based on the allegations in our complaint in our  
2 infringement contentions, right?

3 A. Yes, sir.

4 Q. Let's put that aside for a moment. We'll talk  
5 about those.

6 Other than the infringement contentions, other  
7 than the complaint, do you have any other evidence, any  
8 other piece of documents that you can present to this  
9 jury to establish any of the websites that we've accused  
10 and we've filed complaints against infringe the '702 and  
11 the '943 patent?

12 A. No, sir.

13 Q. I want to have you take a look at the  
14 infringement contentions that you've sort of pointed to.  
15 And in -- in your binder, I think Exhibit No. 8 --  
16 Exhibit No. 8 is one of those contentions, correct?

17 A. Yes, sir.

18 Q. Now, did you review Exhibit 8 in this case?

19 A. Yes, sir.

20 Q. And your testimony was you reviewed these  
21 infringement contentions very, very carefully, right?

22 A. Yes, sir.

23 Q. Let's take a look at the -- the very top of  
24 the second page of Exhibit 8. It says: This disclosure  
25 is based on the information available to Beneficial

1 Innovations -- I think it's cut off there. Let me see  
2 if I can take it...

3 MS. ANDERSON: Give me one minute, Your  
4 Honor?

5 THE COURT: You may have a minute.

6 Q. (By Mr. Adams) Let's try one more time.

7 This disclosure is based on the information  
8 available to Beneficial Innovations as of the date of  
9 this disclosure, and Beneficial Innovations reserves the  
10 right to amend this disclosure to the full extent,  
11 consistent with the Court's rules and orders.

12 Do you see that, sir?

13 A. Yes, sir.

14 Q. You understood that when Beneficial  
15 Innovations filed or served these contentions, it was  
16 before Beneficial Innovations had received any  
17 information in discovery from any of the parties,  
18 including Google, and the ones that are the part of this  
19 case, true?

20 A. Yes, sir.

21 Q. Now, take a look at Page 5 of this document.  
22 Do you have that in front of you, sir?

23 A. Yes, sir.

24 Q. Now, what's identified at Page 5 --

25 MR. ADAMS: Blow up a little part of

1 this.

2 Q. (By Mr. Adams) This represents the -- what's  
3 known as the accused instrumentalities, right? The  
4 things that Beneficial was accusing of infringing,  
5 right?

6 A. Yes, sir.

7 Q. And this sort of chart is included in each of  
8 the infringement contentions, right?

9 A. Yes, sir.

10 Q. You understood that every step of the way,  
11 when Beneficial filed or served its infringement  
12 contentions, it was accusing websites of infringing a  
13 patent, right?

14 A. Yes, sir.

15 Q. At no point did Beneficial ever accuse a  
16 component of a website, right?

17 A. That's not -- no. No, sir.

18 Q. You believe Beneficial accused a -- a specific  
19 part of a website of infringing?

20 A. Yes, sir.

21 Q. And where would you have found that, sir?

22 A. In the -- the claim charts, sir.

23 Q. The claim charts, they break down  
24 element-by-element where the infringing parts of the  
25 website are, right?

1 A. Yes, sir.

2 Q. So, for example, Claim 53 that we've seen  
3 requires that there be a -- an apparatus for a service,  
4 right?

5 A. Yes, sir.

6 Q. And the apparatus has to have several  
7 different things, true?

8 A. Yes, sir.

9 Q. And in order to infringe, a website needs to  
10 have all of the limitations, right?

11 A. Yes, sir.

12 Q. So, for example, if the website fails to have  
13 the store-for-store user identification, but it has  
14 everything else, that website doesn't infringe, right?

15 A. Yes, sir.

16 Q. Correct?

17 A. Correct.

18 Q. In that fashion, Beneficial can't just say you  
19 infringe because you have a store-for-store user  
20 identification, right?

21 A. Not just by itself, no, sir.

22 Q. It needs -- Beneficial needs to accuse all of  
23 the different components combined in the way that the  
24 claim requires it to be combined in, right?

25 A. Yes, sir.

1 Q. And that's what happened in this case,  
2 correct?

3 A. Could you ask that again?

4 Q. Well, that's what happened in this case. When  
5 Beneficial filed its complaint and when it's filed its  
6 infringement contentions, it accused websites of meeting  
7 all of the limitations in the claims as opposed to  
8 accusing one specific product of infringing, true?

9 A. Yes, sir.

10 Q. One of the things that you -- you said was  
11 that the rog responses that were submitted by Beneficial  
12 accused Google of contributory and induced --  
13 contributory infringement and inducement; is that  
14 correct?

15 A. Yes.

16 Q. Take a look at -- at Exhibit 23. Exhibit 23  
17 is the rog response that you pointed to, which is  
18 Interrogatory No. 7.

19 Do you have that, sir?

20 A. Yes, sir.

21 Q. When you were asked questions about this  
22 interrogatory, did you intend to suggest to the jury  
23 that the response that was provided by Beneficial  
24 Innovations meant that Beneficial Innovations was  
25 accusing Google of either infringement by contributory

1 infringement or infringement by inducement, based on  
2 their providing DoubleClick to their customers?

3 A. Yes.

4 Q. Are you certain about that, sir?

5 A. Can you ask that question again --

6 Q. Sure.

7 A. -- please?

8 Q. You pointed us to the third paragraph.

9 A. Yes, sir.

10 Q. And you read this to the jury, and you pointed  
11 specifically to the section that says that Beneficial  
12 seeks an injunction restraining and enjoining Defendants  
13 from any further acts of infringement, contributory  
14 infringement, or inducement of infringement of the '366  
15 and the '702 patent.

16 Do you see that?

17 A. Yes, sir.

18 Q. Do you intend to suggest to the jury that when  
19 this was set forth in the interrogatory that what  
20 Beneficial was doing was seeking an injunction against  
21 Google to prevent them from contributory infringement or  
22 inducement based on their providing DoubleClick to their  
23 customers?

24 A. Yes, sir.

25 Q. When did Google acquire DoubleClick?



1 A. It closed sometime in 2008.

2 Q. So the very first time that Google could have  
3 infringed by providing DoubleClick would have been after  
4 it acquired DoubleClick, right?

5 A. Correct.

6 Q. Do you see the bottom of this -- this document  
7 that's on the screen? Do you see that date there?

8 A. I do.

9 Q. That date is prior to Google acquiring  
10 DoubleClick, right?

11 A. This date on this page is. Yes.

12 Q. December 7 -- I mean -- I'm sorry -- December  
13 5th, 2007, right?

14 A. That's the date printed on this page.

15 Q. Is there a different date?

16 A. If you turn to the next page --

17 Q. Sure.

18 A. -- or two pages further up, on, I guess it's  
19 Page listed as 29.

20 Q. Yes.

21 A. It's the certificate of service, and that date  
22 reads December 5th, 2008.

23 Q. All right. Just so we're clear -- let me pull  
24 this up here. I'm going to blow up the full bottom of  
25 this. You see it says dated 5 -- December 5, 2007, and

1 then there was a signature block on there.

2 Do you see that?

3 A. Yes, sir.

4 Q. You recognize that subject block to be my  
5 name, correct?

6 A. Yes, sir.

7 Q. Are you suggesting to the jury that the date  
8 that's on this page is the date that was not the date  
9 that this document was served?

10 A. Yes, sir.

11 Q. And that's based on the fact that you looked  
12 at the certificate of service, right?

13 A. I'd also look at the caption of -- of this  
14 page.

15 Q. By the caption of the page, you mean what?

16 A. Sorry. The -- sorry. The caption of this  
17 document for that on Page 1.

18 Q. All right. And how does that help you?

19 A. So it lists Beneficial Innovations v the  
20 Defendants. It includes Google and YouTube.

21 Q. Yes.

22 A. This complaint wasn't filed against Google or  
23 YouTube until December 20th, 2007. So for this caption  
24 to be right, the document had to be -- the certificate  
25 of service date must be correct.

1 Q. Well, your belief is, is that this document --  
2 well, withdrawn.

3 You understood that there was a litigation  
4 going on that included a bunch of other Defendants prior  
5 to this, regarding these two patents, correct?

6 A. Correct.

7 Q. Did any of the -- let's just cut to the chase.  
8 None of the infringement contentions that were served in  
9 this case by themselves establishes the fact that any of  
10 the Defendants infringe, correct?

11 A. Correct.

12 Q. The only thing that they establish is  
13 Beneficial Innovations' belief at a particular moment in  
14 time about their case, right?

15 A. Yes, sir.

16 Q. Beneficial hired an expert in this case? I'm  
17 sorry. Withdrawn.

18 Google hired an expert in this case?

19 A. Yes, sir.

20 Q. When Google hired the expert, Google had the  
21 ability to have that expert contact any of the accused  
22 partners and get information about how the accused  
23 partners' website worked to then come before this Court  
24 and offer testimony that those accused partners'  
25 websites infringed, correct?

1           A.     I think -- yes, sir.

2           Q.     And, in fact, when Google intervened in the  
3 case, Google intervened on behalf of those partners,  
4 right?

5           A.     Yes, sir.

6           Q.     That is, you were stepping into the shoe of  
7 the -- of each of the accused partners that you've  
8 talked about, right?

9           A.     No.

10          Q.     Well, with respect to -- when you say you  
11 intervene on behalf of, what does that mean?

12          A.     We were asserting -- we were trying to get  
13 clarification on the license that would flow down to  
14 them.

15          Q.     Well, when you intervene, you filed -- you  
16 filed an answer, right?

17          A.     Yes.

18          Q.     Meaning, Beneficial sued your partners and you  
19 intervened on behalf of those partners, and you filed an  
20 answer on behalf of those partners, right?

21          A.     They remained in the case, but yes, sir.

22          Q.     And you filed affirmative defenses on behalf  
23 of the partners, right?

24          A.     Yes, sir.

25          Q.     In that respect, you were stepping into the

1 shoes of the partners, right?

2 MS. ANDERSON: Objection, Your Honor.  
3 Court's order. May I briefly approach?

4 THE COURT: You may approach.

5 (Bench conference.)

6 THE COURT: What's your objection,  
7 Counsel?

8 MS. ANDERSON: Your Honor, I'm afraid  
9 we're getting -- the reason that the affirmative  
10 defenses were asserted is all about the exhaustion  
11 defense, which has been excluded from the case. I'm  
12 concerned that to answer the questions the witness would  
13 need to explain.

14 We -- we stepped -- we asserted in the  
15 answer Defendants on behalf of customers, but that's the  
16 affirmative defense of exhaustion.

17 We're here today talking about the  
18 breach-of-contract claim. I'm a little bit worried that  
19 to -- for him to explain these questions, he'd have to  
20 explain the exhaustion defense and defenses that are not  
21 before the jury, because the customers were dismissed  
22 and the Judge has excluded -- Your Honor has excluded  
23 exhaustion. I'm just a little worried it's getting  
24 close.

25 THE COURT: All right.

1 MR. ADAMS: Your Honor, I don't intend to  
2 get into any specific defenses or the affirmative  
3 defenses, but I just want to note for the record that  
4 they alleged a bunch of different defenses, including  
5 license, so...

6 THE COURT: Well, we're not going to  
7 disrupt the trial and come up to the bench every time  
8 somebody's worried somebody might be thinking about  
9 getting into something. If somebody crosses the line,  
10 raise your objection. Otherwise, I'm not going to give  
11 advisory opinions from the bench.

12 MS. ANDERSON: All right. Your Honor --

13 THE COURT: Okay. Let's move on.

14 (Bench conference concluded.)

15 MR. ADAMS: May I proceed, Your Honor?

16 THE COURT: You may proceed.

17 Q. (By Mr. Adams) Mr. Trinh, in order for it to  
18 establish the breach of contract in this case, it needed  
19 to prove infringement, correct?

20 A. No.

21 Q. Well, it needed to present this jury with some  
22 evidence that somebody infringed the patents, right?

23 A. Yes, sir.

24 Q. And Google had full opportunity to have the  
25 expert that it hired in this case do an infringement

1 analysis, right?

2 A. Yes, sir.

3 Q. Google didn't do that, did it?

4 A. Correct.

5 Q. Take a look at Exhibit 9. And I want you to  
6 turn to Page 43 of that document, sir.

7 A. Give me a second, please.

8 Q. Yes.

9 A. Yes, sir.

10 Q. Now, this is one of the infringement  
11 contentions that were filed or served in one of the  
12 cases, correct?

13 A. Yes, sir.

14 Q. Did you read this section of the infringement  
15 contentions, sir?

16 A. Yes, sir.

17 Q. In the infringement contentions, and --  
18 withdrawn.

19 You've read more than -- more than one  
20 infringement contention that -- that was served in this  
21 litigation, right?

22 A. Yes, sir.

23 Q. Would you agree with me that for each of the  
24 infringement contentions that were served, it included a  
25 section just like this section in which Plaintiff

1 explained the claim charts that you say set forth their  
2 theories, right?

3 A. Yes, sir.

4 Q. Before each of the claim charts -- and those  
5 are the charts that you say somehow -- you say that  
6 Google or Beneficial sets forth the accusations against  
7 DoubleClick.

8 You understood that the position of Beneficial  
9 at the time was specifically identified in subsection  
10 (i) of this section, right?

11 A. Yes, sir.

12 Q. And what Beneficial Innovations said in this  
13 claim chart and in all other claim charts is that their  
14 position on infringement of specific claims will depend  
15 on the claim construction adopted by the Court. Because  
16 said construction -- because said construction has not  
17 yet occurred, Plaintiff cannot take a final position on  
18 the bases for infringement of the asserted claims.

19 Do you see that?

20 A. I do.

21 Q. What is claim construction?

22 A. In general, it's the process by which the  
23 Judge defines certain words in the patent claims.

24 Q. In the cases that you've litigated and  
25 managed, every patent litigation goes through a process



1 called a Markman hearing, right?

2 A. Yes, sir.

3 Q. And that's the point in time where, when I  
4 showed, for example, Exhibit -- Claim 53, it has a bunch  
5 of words. Some of those words the parties may dispute  
6 what they mean, right?

7 A. Yes, sir.

8 Q. And when there's a dispute about what a word  
9 or phrase means in a patent claim, the parties bring  
10 that dispute to the Court, right?

11 A. Yes, sir.

12 Q. And the Court then basically tells the  
13 parties, this is what that term means, right?

14 A. Yes, sir.

15 Q. There are times when a Plaintiff will file  
16 infringement contentions based on that Plaintiff's  
17 understanding of what those words mean, but then have  
18 the Court later on say to the Plaintiff, no, those words  
19 don't mean that; they mean something else.

20 That's occurred, right?

21 A. Yes, sir.

22 Q. In this case, there were two patents asserted  
23 against the Defendants, right?

24 A. Yes, sir.

25 Q. One of the patents went away, right? Well,

1 the -- the allegations with respect to one of the  
2 patents was dismissed against the Defendants, correct?

3 A. I'm -- I'll take your word for it.

4 Q. Let the record reflect the '943 patent at some  
5 point was dismissed from the case.

6 You know that, right?

7 A. Yes, sir.

8 Q. It was done after the Court issued the claim  
9 construction order in this case, right?

10 A. That sounds right.

11 Q. You know, sir, that when the parties in a  
12 patent litigation file their infringement contentions,  
13 they typically do that before the parties have full  
14 guidance regarding the scope of the patent claims,  
15 right?

16 A. Yes, sir.

17 Q. And depending on that scope, it has a -- it  
18 could have a very significant affect on whether or not a  
19 product infringes or doesn't infringe, true?

20 A. Yes, sir.

21 Q. Meaning the Court can do something that  
22 completely changes what the Plaintiff's theory of the  
23 case and/or completely change whether or not the product  
24 infringes the patent, right?

25 A. Yes, sir.

1 Q. And every time Beneficial served their  
2 infringement contentions that you're relying on to show  
3 infringement in this case, they explained to Google and  
4 all of the partners, these were just our theories,  
5 before the Court has set forth the full scope of the  
6 claim language, right?

7 A. Yes, sir.

8 Q. I noticed that you were shown letters -- I  
9 think they were Exhibits 31, 32, and 37 -- that  
10 represent what you call complaints by Google partners  
11 regarding the fact that they were sued, right?

12 A. Yes, sir.

13 Q. Can you explain to the jury why -- withdrawn.  
14 When Google got those letters, did Google just  
15 get them and put them in a file?

16 A. No, sir.

17 Q. Did Google look at them, tear them up?

18 A. No, sir.

19 Q. Did Google look at them and respond?

20 A. Yes, sir.

21 Q. Can you explain to this jury why it is no one  
22 has shown you and you haven't presented any of your  
23 responses?

24 A. I'm not sure I can answer that without  
25 checking with the Judge.

1 Q. I'm not going to go any further.

2 Did you respond?

3 A. Yes, sir.

4 Q. At any point, did you -- withdrawn.

5 Did Google pay to any of the accused partners  
6 any monies based on the fact that they complained?

7 A. No.

8 Q. At any point, did Google lose any partners  
9 based on the fact that Beneficial filed a lawsuit  
10 against them and they complained?

11 A. Not to my knowledge.

12 Q. All right. In fact, as of the status -- as of  
13 today, the only thing that's happened, based on the fact  
14 that Beneficial filed a complaint against the accused  
15 partners, is that they sent a letter to Google and  
16 Google sent a response to them, right?

17 A. Again, this -- I'm not sure I can answer that  
18 in detail without checking with the Judge.

19 Q. Let's do it this way: In each instance where  
20 there was a complaint, as you call it, served or sent by  
21 a Google partner, Google sent a letter back, right?

22 A. Yes, sir.

23 Q. Google never paid any monies pursuant to those  
24 complaints, right?

25 A. Correct.

1 Q. And Google never lost any customers or  
2 partners because of that complaint, right?

3 A. Correct.

4 Q. Now, the key issue in this case is the  
5 settlement agreement. And I want you to take a look at  
6 Exhibit 1. I think this is the first document in your  
7 binder.

8 Do you have that in front of you, sir?

9 A. Yes, sir.

10 Q. What role did you play in negotiating the  
11 terms of this agreement?

12 A. I was one of the Google attorneys involved.

13 Q. And your role was just to be one of the  
14 attorneys, or did you have a -- a more significant role?

15 A. I worked on drafting this agreement, and like  
16 I said earlier, my day-to-day supports was to be  
17 responsible for these matters.

18 Q. Part of your role was trying to get the best  
19 license and deal that you could get for Google for the  
20 money that Google was paying, correct?

21 A. Yes.

22 Q. And at the time that you were negotiating with  
23 respect to the terms of this license agreement, did you  
24 have in your mindset that you wanted to get the best  
25 possible deal for Google's partners?

1 A. Yes.

2 Q. You understand that Beneficial -- Google has  
3 accused Beneficial of breaching the contract because it  
4 sued the partners, right?

5 A. Yes, sir.

6 Q. Take a look at Section 6 of the agreement.  
7 It's at Page 4 of Exhibit 9.

8 Do you have that in front of you, sir?

9 A. Yes, sir.

10 Q. I'm just going to blow up the first section  
11 here.

12 Now, it says covenant not to sue. Do you see  
13 that?

14 A. Yes, sir.

15 Q. You're familiar with that phrase?

16 A. Yes, sir.

17 Q. What does it mean?

18 A. This is an agreement -- or this section covers  
19 an arrangement between the parties not to sue each  
20 other.

21 Q. Well, I didn't ask you about the section. I  
22 asked but what does a covenant not to sue mean in the  
23 context of a license agreement.

24 A. Yes, sir. It's an agreement not to sue.

25 Q. Right. It's -- it's a section where if the

1 parties wanted to, they could negotiate that one party  
2 not sue anybody, right?

3 A. In general, yes, sir.

4 Q. If -- if Beneficial -- if Google wanted to and  
5 they wanted to get the best possible deal for their  
6 partners, one of the things Google could have done is  
7 negotiate an agreement that said, Beneficial, you can't  
8 sue any of our partners, right?

9 A. That wasn't possible, no, sir.

10 Q. Well, one of the things Google could have  
11 tried to negotiate for was a covenant or a promise that  
12 Beneficial not sue its partners, true?

13 MS. ANDERSON: Objection. Motion in  
14 limine, Your Honor.

15 THE COURT: Specify your motion in  
16 limine, Counsel.

17 MS. ANDERSON: To respond to the  
18 question, the witness may need to address negotiations.

19 THE COURT: Restate your question,  
20 Counsel.

21 MR. ADAMS: Sure.

22 Q. (By Mr. Adams) Let's do it this way: In the  
23 covenant not to sue, Google negotiated for an agreement  
24 by Beneficial not to sue certain entities, right?

25 A. Correct.

1 Q. It negotiated for an agreement that Beneficial  
2 not sue its affiliated company called YouTube, right?

3 A. Yes, sir.

4 Q. And it negotiated an agreement that Beneficial  
5 not sue NBC Universal, right?

6 A. Yes, sir.

7 Q. Now, was NBC Universal an affiliate of Google  
8 at the time?

9 A. No, sir.

10 Q. All right. It was a completely separate  
11 company, right?

12 A. Yes, sir.

13 Q. And Google negotiated an agreement that  
14 Beneficial not sue Google's other affiliates, right,  
15 other than YouTube, right?

16 A. Yes, sir.

17 Q. Nowhere in Section 6 of this covenant not to  
18 sue did Google or Beneficial agree that Beneficial would  
19 sue Beneficial's partners, true?

20 A. Correct.

21 Q. So from the standpoint of what promises were  
22 made and broken, there was no promise made by Beneficial  
23 that it wouldn't sue Google's partners in the covenant  
24 not to sue that was breached by Beneficial, correct?

25 A. Not a covenant not to sue, that's correct.



1 Q. The only complaint that you have is that there  
2 was a breach of the agreement based on the license,  
3 right?

4 A. Yes, sir.

5 Q. Now, you agreed, Mr. Trinh, that when  
6 Beneficial and Google sat down and they negotiated the  
7 terms of the license, Google had the opportunity at that  
8 time to try to get the -- withdrawn. Ask it another  
9 way.

10 Google sought the -- to get the best license  
11 it could get in this agreement, right?

12 A. Yes, sir.

13 Q. And the license that Google received was not a  
14 blanket license for Google's partners, right?

15 A. Correct.

16 Q. But that doesn't mean it wasn't a license that  
17 said we give you, Google's partners, a license to use  
18 Google's products without any conditions, right?

19 A. Correct.

20 Q. The license was conditional, right?

21 A. Limited, yes.

22 Q. When you say limited, what do you mean by  
23 that?

24 A. They were -- there were boundaries placed on  
25 that license.

1 Q. Let's take a look at Page 2 of the license  
2 agreement. The limits that were placed on the  
3 agreement, they're found in both Section A and Section B  
4 of the license agreement, correct?

5 A. Yes, sir.

6 Q. When Google -- withdrawn.  
7 Section B, that's a for-avoidance-of-doubt  
8 section. Do you see that?

9 A. Yes, sir.

10 Q. And that means that what the parties were  
11 doing in this subsection, they were clarifying what the  
12 scope of that license to Google's partners was, right?

13 A. Yes, sir.

14 Q. And they did that because that was an  
15 important concept in this license agreement, true?

16 A. Yes, sir.

17 Q. Now, one of the things that -- withdrawn.

18 Let's do it this way, sir: I want you to  
19 focus on Section (c) in the Provision B of this license  
20 section. It says: The provision of those products or  
21 services would not constitute direct or indirect  
22 infringement by Google of Claim X, right?

23 A. Yes, sir.

24 Q. When you responded to the Google partners that  
25 complained based on the Beneficial's lawsuit, did Google

1 explain to its customers that they were only liable --  
2 withdrawn.

3           They were only licensed if Google's provision  
4 of DoubleClick constituted indirect infringement by  
5 Google?

6           A.    Yes, sir.

7           Q.    At the time that you did that, did Google  
8 believe -- was Google's state of mind that the fact that  
9 Google gave them DoubleClick meant that Google was  
10 indirectly infringing the patent?

11          A.    Can you ask that question again?

12          Q.    Sure. Let me refer back.

13                As of today, Google does not believe that it's  
14 infringing the patent in any way, whether it's direct or  
15 indirect, right?

16          A.    Correct.

17          Q.    In fact, Google's position is that the ad tag  
18 that they provide by DoubleClick doesn't meet the claim  
19 limitation in Claim 53, right?

20          A.    Can you ask that again?

21          Q.    Sure. One of the things that Google asserted,  
22 when the lawsuit was filed against them by Beneficial,  
23 was that that Claim Limitation (h) that I put on the  
24 board several times that requires the programmatic  
25 elements for combining advertising-related information

1 with search-related information, Google's position has  
2 always been that they provide ad tags, and those ad tags  
3 do not meet the claim language advertising related  
4 information, true?

5 A. Correct.

6 Q. And Google maintains that today, right?

7 A. Correct.

8 Q. When Google's partners sent a letter saying:  
9 Look, you owe us indemnification. As of that moment in  
10 time, Google's mindset, their understanding was we don't  
11 indirectly infringe this patent simply because we give  
12 you DoubleClick, right?

13 A. No.

14 Q. Well, is it the case that Google thought, when  
15 it got the letters, that Google, in fact, was committing  
16 indirect infringement?

17 A. No.

18 Q. That's my question, sir. Google's state of  
19 mind, when they received the indemnification letters  
20 from their customers, was that Google's provision of  
21 DoubleClick did not constitute indirect infringement,  
22 correct?

23 A. Not quite, no, sir.

24 Q. Why is that not quite?

25 A. Those were our contentions; however,

1 Beneficial's infringement allegations, as we understood  
2 them, would be so broad so that if Beneficial was right,  
3 then they -- then they would indirectly infringe and,  
4 thus, we'd be licensed.

5 Q. Right. That's why I couched the question,  
6 sir, not with respect to what Beneficial's contentions  
7 were but what Google's state of mind was.

8 Do you understand that?

9 A. Okay.

10 Q. Google's state of mind. Google gets a letter.  
11 Google reads it. As of the time Google read those  
12 indemnification letters, Google's state of mind was,  
13 providing DoubleClick to you, Google partner, does not  
14 constitute indirect infringement by us, because we don't  
15 believe we infringe the patent, whether directly or  
16 indirectly.

17 That was Google's state of mind at the time,  
18 right?

19 A. No.

20 Q. Google had a different state of mind?

21 A. Yes.

22 Q. And Google's different state of mind was,  
23 well, if we believe Beneficial's allegations, then maybe  
24 we could be liable, right?

25 A. Correct.

1 Q. But from your perspective, based on the  
2 analysis that you did and the expert that you hired in  
3 the prior case, you knew that if push came to shove, you  
4 would defend the case and your position would be we  
5 don't infringe, right?

6 A. No.

7 Q. Well, is it the case that if you had stepped  
8 into the shoes of -- well, withdrawn.

9 When you intervene in this case, in this case,  
10 you didn't intervene and say: Well, yeah, we infringe,  
11 and therefore, our -- our -- our -- and -- and the  
12 reason why these Google partners are -- are not  
13 infringing is because they're licensed, that wasn't the  
14 position you took, was it?

15 A. No, sir.

16 Q. Right. When you intervened in this case, you  
17 filed an answer denying infringement, right?

18 A. Yes, sir.

19 Q. Not just based on license; you denied that you  
20 were infringing the patent, correct?

21 A. Correct.

22 Q. Because that's the view that Google had from  
23 day one up to today, right?

24 A. Not quite.

25 Q. Well --

1 A. No, sir.

2 Q. Well, the not quite, Mr. Trinh, is if you look  
3 to what our beliefs are, right?

4 A. No, sir.

5 Q. Well, at some point, did Google form the  
6 opinion that we infringe?

7 A. No, sir.

8 Q. And Google never formed the opinion that  
9 providing DoubleClick means that we indirectly infringe,  
10 right?

11 A. Can you repeat that?

12 Q. Sure.

13 Google has never formed the opinion that based  
14 on their analysis of the claim language and their  
15 analysis of the way their system works that providing  
16 DoubleClick to any of its customers constitutes indirect  
17 infringement by Google, right?

18 A. Correct. We have never reached that.

19 Q. When Google executed the settlement agreement  
20 that's part of this case, in that agreement, Google  
21 maintained its denial of infringement, right?

22 A. Correct.

23 Q. By that, I mean Google paid money to get a  
24 license, right?

25 A. Correct.

1 Q. And at the same time, Google said: You know  
2 what; we're paying this money, but we're not admitting  
3 that we infringe any of your patents, right?

4 A. Correct.

5 Q. At the time that Google settled and Google  
6 executed the settlement agreement, there was another  
7 Defendant still in the case, right?

8 A. Yes, sir.

9 Q. That was the New York Times, right?

10 A. Yes, sir.

11 Q. And they had a website, NewYorkTimes.com,  
12 correct?

13 A. Yes, sir.

14 Q. And the NewYorkTimes.com uses DoubleClick,  
15 right?

16 A. I -- I don't know that.

17 Q. What about Amazon.com? Does Amazon.com use  
18 DoubleClick?

19 A. Yes, sir.

20 Q. Does -- Amazon.com is a customer, right?

21 A. Yes, sir.

22 Q. Amazon.com is a -- was a Defendant in this  
23 lawsuit, correct?

24 A. Yes, sir.

25 Q. And you know that Amazon.com today is still



1     contesting infringement, right?

2             A.     Yes, sir.

3             Q.     How did Google treat Amazon.com in the  
4     settlement agreement?     Withdrawn.

5             Let me ask it a different way.

6             You want to tell -- withdrawn.

7             You've testified to the jury that what you  
8     were trying to do was get peace so that no further  
9     lawsuits can be brought against your customers, right?

10            A.     Yes, sir.

11            Q.     And at the time you executed the settlement  
12     agreement, you knew that Amazon was one of your  
13     customers, right?

14            A.     I don't know that, actually.

15            Q.     You know today that Amazon is a customer,  
16     correct?

17            A.     Yes, sir.

18            Q.     How did Google treat Amazon in the settlement  
19     agreement?

20            A.     Could you clarify what you mean by that?

21            Q.     Sure.   Take a look at Page 2 of the settlement  
22     agreement.

23            A.     Yes, sir.

24            Q.     You see the Section D at the top?

25            A.     I do.

1 Q. You were part of the negotiation of this  
2 section, right?

3 A. Yes.

4 Q. You understood what it meant --

5 A. Yes.

6 Q. -- right?

7 It says: Excluded parties.

8 Do you see that?

9 A. It does.

10 Q. And what does excluded party -- what does it  
11 mean?

12 A. It's defined here, but it's a list of specific  
13 customers -- or sorry -- specific parties.

14 Q. One of the parties that was identified as an  
15 excluded party from the license agreement was one of  
16 your customers, right?

17 A. It's Amazon, yeah, correct.

18 Q. In the settlement agreement, Mr. Trinh, Google  
19 bargained for a conditional license for its partners,  
20 and for some of its partners, agreed that they weren't  
21 covered at all, right?

22 A. No.

23 Q. Well, let's ask it another way. In the  
24 settlement agreement, Google bargained for a conditional  
25 license for some of its partners, right?

1 A. Correct.

2 Q. And for others of its partners, Google  
3 identified them as an excluded party from the settlement  
4 agreement, true?

5 A. Correct.

6 Q. One of the -- one of the customers is a  
7 company called Conde Nast, right? That's a customer?

8 A. I'm not aware of that.

9 MR. ADAMS: Your Honor, I think I'm done.  
10 If I can just have one moment to confer.

11 THE COURT: Take a moment.

12 (Pause in proceedings.)

13 MR. ADAMS: Okay. Your Honor, I have no  
14 further questions at this moment. I pass the witness.

15 THE COURT: Do you have redirect,  
16 Ms. Anderson?

17 MS. ANDERSON: Only very briefly, Your  
18 Honor.

19 THE COURT: All right. Proceed.

20 MS. ANDERSON: Thank you.

21 REDIRECT EXAMINATION

22 BY MS. ANDERSON:

23 Q. Hello, Mr. Trinh.

24 A. Good afternoon.

25 Q. You were asked a series of questions about

1 your view as to whether or not Beneficial's allegations  
2 of infringement and language in infringement contentions  
3 had any value as evidence in this case.

4 Do you recall that line of questions?

5 A. Yes. Yes, ma'am.

6 Q. Do you have a view as to whether or not  
7 Beneficial's words in infringement contentions matter in  
8 this case?

9 A. Yes.

10 Q. What is your view in that regard?

11 A. They do. That's the -- the best statement of  
12 their current beliefs and what they're going to try to  
13 set out to prove to this Court or any Court.

14 Q. Do you have a view as to whether or not the  
15 words of Beneficial in their infringement contentions  
16 matter as to whether or not customers are licensed under  
17 the settlement agreement?

18 A. Yes, ma'am.

19 Q. And what is your view, sir?

20 A. What the infringement contentions try to prove  
21 or they -- the infringement theories set out to prove is  
22 that the customers do infringe on these theories and --  
23 and that Beneficial's right would be direct or indirect  
24 infringement.

25 Q. Thank you.

1           You were also asked a series of questions  
2 about what you know about what Beneficial did or did not  
3 do in preparing complaints in connection with the  
4 lawsuits.

5           Do you remember that line of questions?

6           A.    Yes, ma'am.

7           Q.    Do you have knowledge as to what Beneficial  
8 did or didn't do in preparing its words in accusing  
9 Google and customers of infringement?

10          A.    I only know the Court requirements, ma'am.

11          Q.    Okay. And what are those?

12          A.    The Court requirements require that a  
13 Plaintiff, before setting -- or filing a lawsuit, do  
14 their best investigation and -- and -- and -- and access  
15 all publicly available information to state their case.

16          Q.    And is there some information available  
17 publicly about DoubleClick?

18          A.    Yes, ma'am.

19          Q.    And for how long has information been  
20 available publicly about DoubleClick?

21          A.    For as long as DoubleClick's been a product.  
22 That's all before my time at Google.

23          Q.    You were also asked some questions about  
24 whether or not Google lost any partners as a result of  
25 Beneficial's lawsuit?

1 A. Yes, ma'am.

2 Q. Are you the person at Google who would know  
3 whether or not a customer was lost as a result of the  
4 lawsuit?

5 A. No, ma'am.

6 Q. And why is that?

7 A. I'm on the legal side of -- the sales people  
8 who handle the day-to-day relationships with the  
9 customers in their -- that organization would be  
10 better -- better positioned.

11 Q. Okay. You were also asked some questions  
12 about the language in the settlement agreement called a  
13 covenant not to sue and whether or not there were  
14 promises not to sue certain partners.

15 Do you remember those questions?

16 A. Yes, ma'am.

17 Q. Do you have a view as to whether or not the  
18 license provisions in the settlement agreement provide  
19 any protection against lawsuits to anyone?

20 A. Yes, ma'am.

21 Q. And why is that?

22 A. There are two different things. The license,  
23 as we discussed, is limited, whereas the covenant not to  
24 sue is not. The covenant not to sue is very broad,  
25 covering any kind of infringement, patent or otherwise,

1 of any intellectual property right.

2 And so the covenants not to sue are covenants  
3 not to sue -- sorry -- are much -- much broader than the  
4 license.

5 Q. And I would like to focus your attention  
6 specifically on the license provision Section 2. Did  
7 those provisions provide any protection against lawsuits  
8 against customers?

9 A. Yes, ma'am.

10 Q. And in what way?

11 A. A license, like we've discussed, is permission  
12 to use the product or use the -- sorry -- the -- the  
13 claimed invention. And that's -- that permission is why  
14 you don't get sued.

15 Q. Okay. Thank you.

16 You were also asked some questions about  
17 whether or not Google admitted infringement.

18 Do you recall those lines of questions?

19 A. Yes, ma'am.

20 Q. All right. Are there any provisions in the  
21 settlement agreement governing whether or not Google had  
22 to admit infringement to have the benefit of the license  
23 within the settlement agreement?

24 A. Yes, ma'am.

25 So in Section 15 that we've discussed

1 before --

2 MS. ANDERSON: If we could please display  
3 Exhibit 1, Section 15, Ben.

4 Thank you.

5 A. That's between -- again, between Pages 6 and  
6 7.

7 Q. (By Ms. Anderson) Let's just show the top of  
8 Page 7.

9 A. Yes, ma'am.

10 Q. I think it will be easy to see.

11 A. Yes, ma'am.

12 Q. Thank you.

13 A. This is the provision that governs their  
14 agreement on that question.

15 Q. Okay. You were also asked a lot of questions  
16 about Google's mindset at certain points in time about  
17 whether or not it believed Google's customers infringed.

18 Do you remember that general line of  
19 questioning?

20 A. Yes, ma'am.

21 Q. I'd like to point your attention to the  
22 license agreement in the -- in the settlement agreement  
23 at Page 2, Section A, and specifically direct your  
24 attention to the little -- little (ii) section that  
25 starts in the middle that you identified as the



1 customer's license.

2 A. Yes, ma'am.

3 Q. And you read through that language before, but  
4 I'd like to particularly draw your attention to the last  
5 part where it says: Would constitute direct or indirect  
6 infringement of a claim of the licensed patents by  
7 Defendants or affiliates but for the license.

8 Do you have that in mind: Would? Starting  
9 with: Would?

10 MS. ANDERSON: If we could have that  
11 highlighted.

12 Thank you.

13 A. Yes, ma'am.

14 Q. (By Ms. Anderson) And going on to the end.  
15 Does this language I've identified have any relationship  
16 one way or another with the answers you were giving to  
17 the questions about Google's mindset as to whether or  
18 not it believed any of our customers infringed?

19 A. Yes, ma'am.

20 So like I said, this -- this entire agreement  
21 was about resolving the disputes between the parties,  
22 and -- and this language is there because the -- the  
23 reason Beneficial would sue us or our partners is for  
24 direct or indirect infringement of their patents.

25 Q. Okay. And what, if any, relationship does the

1 word would or but for this license have to the -- to the  
2 answers you are giving to questions about Google's  
3 mindset as to whether or not there was infringement?

4 A. Yes, ma'am.

5 It was never my -- it was never my mindset  
6 that a customer would have to go through a -- a legal  
7 process and get a finding of infringement before it was  
8 licensed.

9 MS. ANDERSON: Thank you, Your Honor. I  
10 pass the witness.

11 THE COURT: Further cross-examination,  
12 Mr. Adams?

13 MR. ADAMS: Briefly, Your Honor.  
14 If I could have the same slides on the board.

15 THE COURT: All right. Proceed.

16 RECROSS-EXAMINATION

17 BY MR. ADAMS:

18 Q. Mr. Trinh, you -- when -- when the parties  
19 negotiated that portion of the license agreement, you  
20 understood that in order for there to be some resolution  
21 as to whether or not the -- the partners were licensed,  
22 there has to be some -- some determination, right, as to  
23 whether or not providing that product would constitute  
24 either direct or indirect infringement, right? Right?

25 A. No.

1 Q. Well, did -- the parties didn't negotiate  
2 words that had no meaning, did they?

3 A. They did not, no, sir.

4 Q. All right. Did Google bargain for a -- a  
5 license that said: The parties are licensed if  
6 Beneficial believes the product would constitute  
7 indirect infringement?

8 A. The language doesn't have that in it.

9 Q. It just says, it would constitute, right?

10 A. That's what it -- yes, sir.

11 Q. At the very least, Mr. Trinh, you agree that  
12 from some source, there has to be some evidence to  
13 suggest or to show that providing DoubleClick would  
14 constitute indirect infringement.

15 You agree with that?

16 A. Yes, sir.

17 Q. Now, if it's the case that just pointing to  
18 Beneficial's allegations are not sufficient to show that  
19 DoubleClick or providing DoubleClick would constitute  
20 indirect infringement, you would agree that there's no  
21 other evidence that you can point to in this case that  
22 would establish this, right?

23 A. Can you ask -- ask that again?

24 Q. Sure.

25 If it's the case that it's not enough to just

1 point to Beneficial's beliefs and their contentions  
2 early in the case to show that providing DoubleClick  
3 would constitute indirect infringement, you would agree  
4 that you have no other source of evidence to point to  
5 that would satisfy this condition, right?

6 A. Correct.

7 Q. You were asked some questions about the harm  
8 issue. Do you remember that?

9 A. Yes, sir.

10 Q. And one of the things I asked you on cross was  
11 whether or not any of your customers left or you lost  
12 business based on the lawsuits, right?

13 A. Yes.

14 Q. And on redirect, Counsel asked you whether or  
15 not you were the person that would know that  
16 information, right?

17 A. Correct.

18 Q. Who made the decision to appoint you to be  
19 Google's representative here? Was it you?

20 A. Yes.

21 Q. You yourself made the decision that says: I  
22 will represent and come here on behalf of Google, right?

23 A. Yes.

24 Q. Now, when you made that decision, you  
25 understood Google's theories of the case, right?

1 A. Yes, sir.

2 Q. You understood how Google was intending to  
3 show it was harmed, right?

4 A. Yes, sir.

5 Q. When -- when you -- when you made the decision  
6 to be its representative and doing your full scope, you  
7 didn't think: Well, if I don't know if our customers  
8 left, maybe I should find it out from someone?

9 A. I can't know the future, sir. No, sir.

10 Q. Well, all right. So you know -- as you sit  
11 here today, you know for sure no customers have left as  
12 of today, right?

13 A. That's correct.

14 MR. ADAMS: No further questions, Your  
15 Honor.

16 THE COURT: Additional direct?

17 MS. ANDERSON: Just briefly, Your Honor.  
18 Thank you.

19 THE COURT: All right.

20 REDIRECT EXAMINATION

21 BY MS. ANDERSON:

22 Q. Mr. Trinh, you were asked questions about  
23 whether it -- about Beneficial's infringement contention  
24 allegations. Do those contentions and allegations have  
25 any value in your eyes in terms of proving that

1 Beneficial has breached the contract?

2 MR. ADAMS: Objection, Your Honor. It's  
3 been asked and answered.

4 THE COURT: I'll allow it.

5 A. Yes, ma'am.

6 Q. (By Ms. Anderson) And why is that?

7 A. Because they establish what Beneficial is  
8 setting out to do in the case. That's what their  
9 objective is in the lawsuit, and that's how they're  
10 going to get there in a patent infringement lawsuit.

11 Q. You were also asked questions about whether or  
12 not you had done investigation into whether or not  
13 customers had been lost as a result of the Beneficial  
14 lawsuits.

15 Do you remember those questions?

16 A. Yes, ma'am.

17 Q. Did you receive information from Beneficial  
18 informing you that you were going to be asked that  
19 question today?

20 A. No, ma'am.

21 Q. Thank you.

22 MS. ANDERSON: No question -- I pass the  
23 witness, Your Honor.

24 THE COURT: Additional cross?

25 MR. ADAMS: No, Your Honor.

1 THE COURT: All right. You may step  
2 down, Mr. Trinh.

3 Ladies and Gentlemen, we're going to take  
4 another recess at this time. I'm going to excuse you to  
5 the jury room. Please take an opportunity to stretch  
6 your legs and get a drink of water. We'll try to keep  
7 this about the same length as the preceding recess.

8 You may step down, Mr. Trinh.

9 You may leave your jury notebooks where  
10 they are, and we'll have you back in here shortly and  
11 move to the Plaintiff's next witness.

12 But you're excused for recess at this  
13 time.

14 COURT SECURITY OFFICER: All rise.

15 THE COURT: Don't discuss the case among  
16 yourselves.

17 (Jury out.)

18 THE COURT: All right. Be seated,  
19 please.

20 Counsel, I want to remind you of one  
21 thing just so that no one is caught by surprise. Before  
22 I bring the jury in in the morning, I'm going to ask  
23 each side to go to the podium and read into the record  
24 those exhibits that they've used during today's portion  
25 of the trial that come from the pre-admitted exhibits.

1 And that way we will keep the record clear each morning  
2 with what's been used from the list of pre-admitted  
3 exhibits in the preceding day's portion of the trial.  
4 And I will do that first thing before I bring in the  
5 jury. I think you probably all knew that, but just to  
6 make sure there's no confusion, I want to make sure  
7 that's clear.

8                   With that -- with that, we'll stand in  
9 recess for the next 10 minutes.

10                   COURT SECURITY OFFICER: All rise.

11                   (Recess.)

12                   (Jury out.)

13                   COURT SECURITY OFFICER: All rise.

14                   THE COURT: Be seated, please.

15                   Would you bring in the jury, please,

16 Mr. McAteer?

17                   COURT SECURITY OFFICER: Yes, sir.

18 All rise for the jury.

19                   (Jury in.)

20                   THE COURT: Please be seated.

21                   Plaintiff, call your next witness.

22                   MS. HUBER: The Plaintiff calls Jonathan  
23 Bellack.

24                   THE COURT: All right. If you'll come  
25 forward, Mr. Bellack. You have been sworn, correct?



1 THE WITNESS: Not yet.

2 THE COURT: Then come forward, and our  
3 Courtroom Deputy will administer the oath to you.

4 (Witness sworn.)

5 THE COURT: If you'll come around and  
6 have a seat here at the witness stand.

7 MR. JONES: Your Honor, could I approach  
8 to give binders to the opposing counsel and the witness?

9 THE COURT: Yes, you may.

10 All right. Ms. Huber, you may proceed.

11 JONATHAN BELLACK, PLAINTIFF'S WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MS. HUBER:

14 Q. Good afternoon, Mr. Bellack.

15 A. Hi.

16 Q. Please introduce yourself to the jury.

17 A. Sure. My name is Jonathan Bellack. I'm a  
18 director of product management for Google.

19 Q. Can you tell the jury a little bit more about  
20 yourself?

21 A. Sure. I'm 41 years old. I live in Montclair,  
22 New Jersey, and I have a five-year-old son and a  
23 three-month-old son at home enjoying the snowstorm right  
24 now.

25 Q. Where did you go to school?

1           A.     I went to high school outside of Philadelphia,  
2 undergraduate at Yale University, and graduate school  
3 for business at New York University.

4           Q.     You testified that you work at Google. How  
5 long have you worked there?

6           A.     For almost six years.

7           Q.     How did you come to join Google?

8           A.     I worked for a company called DoubleClick that  
9 was purchased by Google in 2008.

10          Q.     How long were you with DoubleClick before it  
11 became a part of Google?

12          A.     I joined DoubleClick in May of 2004.

13          Q.     And what is DoubleClick?

14          A.     DoubleClick is a company that provides  
15 software and services that help buyers and sellers of  
16 online advertising work together more effectively.

17          Q.     In the course of your work, have you come to  
18 understand why Google acquired DoubleClick?

19          A.     Yes, I have.

20          Q.     Please tell the jury what you know about that.

21          A.     DoubleClick was a specialist in a type of  
22 online advertising called display advertising, which was  
23 a business that Google was interested in entering. So  
24 Google bought DoubleClick for our expertise and  
25 technologies to help them compete in the display

1 advertising business.

2 Q. And how long have you been a director of  
3 product management at Google?

4 A. For a little over four years.

5 Q. And what was your position at DoubleClick  
6 before you were a director of product management?

7 A. The structure was a little different. It was  
8 a smaller company. There I was a vice president of  
9 product management.

10 Q. And as a director of product management, what  
11 products are you responsible for?

12 A. I am responsible for our ad-serving products  
13 for publishers called DoubleClick for Publishers and  
14 DoubleClick Enterprise, and also our ad network benefits  
15 for smaller publishers called AdSense.

16 Q. Tell us about your responsibilities as a  
17 director of product management.

18 A. A product manager is responsible for making  
19 sure that the products we offer meet the needs of our  
20 customers. So we meet with our customers very  
21 frequently to understand what they are trying to do and  
22 then work with the engineers in Google to design and  
23 build products that will help those customers out. And  
24 then we explain to the customers what changes and  
25 improvements we've made to help them.

1 Q. What was your position -- excuse me. I'd like  
2 to talk -- actually, switch gears and talk a little bit  
3 about why we're here.

4 Do you know that this case involves some of  
5 Google's customers?

6 A. Yes, I do.

7 Q. What do you know about Beneficial's claims  
8 against those customers?

9 A. I understand that there are some lawsuits  
10 involved but not much more.

11 Q. Do you know about how DoubleClick products  
12 work?

13 A. Yes, I do.

14 Q. Is that something you need to know for your  
15 job?

16 A. It is a requirement of my job.

17 Q. Please describe for the jury what the  
18 DoubleClick for Publishers product is that you  
19 mentioned?

20 A. Sure. DoubleClick for Publishers is what we  
21 call an ad server. And the way it works is, for  
22 example, if you're looking at a website like the website  
23 for Country Weekly Magazine, when that publication wants  
24 to show ads alongside the content or service that they  
25 offer, DFP is the technology they use to get those ads

1 to show up and to try to show ads to people that are  
2 likely to like them.

3 Q. So if I'm on the Internet and I go to a  
4 website that shows advertising, what role does  
5 DoubleClick play in that?

6 A. So DoubleClick is effectively providing the  
7 plumbing. So we have a connection so that the publisher  
8 can cause the DoubleClick ad server to be called. Say  
9 these are the kinds of things that I would like in the  
10 ad, and we also provide a user interface, a software  
11 tool for the publisher to say what advertising contracts  
12 they have entered into.

13 For example, we have a deal with Ford to show  
14 ads for trucks or cars to certain kinds of people.

15 Q. As part of your job, have you become familiar  
16 with how advertisements appear on a customer's website?

17 A. Yes, I have.

18 Q. Prior to you -- to your testimony today, were  
19 you asked to locate a website with an advertisement that  
20 was served through DoubleClick?

21 A. I was.

22 Q. And what did you do to find that?

23 A. I looked at lists of companies that were  
24 customers of ours, went to their websites, and used a  
25 software tool to look at the code of that page, which

1 are sort of the instructions about what to display, to  
2 find a page that had the code to call DFP, which is  
3 called an ad tag.

4 Q. Can you take a look at the two slides inside  
5 your notebook there?

6 A. Yes.

7 Q. Is this a fair and accurate depiction of what  
8 you observed on the website in terms of the  
9 advertisement that you saw?

10 A. Yes, it is.

11 MS. HUBER: Your Honor, we would ask  
12 permission to show this to the jury for demonstrative  
13 purposes only.

14 THE COURT: Unless there's objection,  
15 proceed.

16 Q. (By Ms. Huber) Mr. Bellack, can you describe  
17 what we're looking at here?

18 A. Yes. We're looking at a picture of the  
19 homepage of the website of Country Weekly Magazine. And  
20 the two key things here sort of on the left is a lot of  
21 their content, the article about George Strait and  
22 George Jones, links to news and videos.

23 Then in the top right and lower right are two  
24 online advertisements. Those are the black rectangles,  
25 one with Brad Paisley's album cover and the other with

1 the Johnny Cash on the cover.

2 Q. You also mentioned a product called DART  
3 Enterprise. What is that product?

4 A. DART Enterprise is also an ad server. It  
5 works a little bit differently. DFP, the first product  
6 I mentioned, is a product where Google operates all of  
7 the servers that make the product work. So we take care  
8 of serving the ads, maintaining the hardware, making  
9 sure everything works well. Sort of like if you go to  
10 Facebook or YouTube on your computer, you're contacting  
11 their servers.

12 DART Enterprise is what was called an  
13 installed software ad server, which means we provide the  
14 software and the instructions on how to use it, but the  
15 publisher actually installs it on their own computers to  
16 make it operate, more like if you buy a copy of  
17 Microsoft Word or a video game, you get a CD or you  
18 download it and you install it on your own computer.

19 Q. As far as you know, are DoubleClick for  
20 Publishers and DART Enterprise used for anything other  
21 than to display advertisements on websites?

22 A. They are not.

23 Q. Describe whether that's how Google intends its  
24 products to be used.

25 A. That is how they were intended to be used.

1 Q. I'd like to talk to you a little bit about who  
2 your customers are, and I'd like to start just by asking  
3 generally who the customers are of DoubleClick.

4 A. Sure. It's really anyone who is in the  
5 business of selling online advertisements alongside  
6 content or services. So that could involve magazine or  
7 newspaper companies. Like American Media, Incorporated,  
8 is the company that owns Country Weekly, or Scripps,  
9 which is a newspaper chain. It could involve companies  
10 who offer different kinds of online services, like  
11 Expedia, which provides travel-booking services, or Auto  
12 Trader, which provides information on new and used cars.  
13 It could even be TV companies that have websites that go  
14 along with it, such as Viacom, the owner of Nickelodeon  
15 and MTV.

16 Q. Do you deal directly with your customers as a  
17 product manager?

18 A. I meet with them very frequently.

19 Q. Describe what Google has discovered its  
20 customers want out of DoubleClick?

21 A. Sure. Publishers are looking for a few  
22 things. They are looking for a very reliable ad-serving  
23 service. They are looking for a large number of  
24 features and options about what kind of online  
25 advertisements they can serve.



1           And very importantly, they are looking for  
2 help and advice and guidance and instruction about how  
3 to use an ad server and how to get ads to appear on  
4 their site, because these products are quite complicated  
5 and very hard to use without that kind of help.

6           Q.    Are there any competitors of Google  
7 DoubleClick in this area?

8           A.    Yes, there are.

9           Q.    Who are they?

10          A.    Some examples would be a company in California  
11 called OpenX that sells ad serving. There is an  
12 international ad agency called WPP, which has a  
13 subsidiary called 24/7 that offers an ad server. And up  
14 until quite recently, Yahoo! also offered an ad server  
15 mostly for newspaper companies, for example.

16          Q.    Have you come to learn whether your companies  
17 used more than one ad server, say DoubleClick and OpenX,  
18 as you mentioned?

19          A.    Yes. There are two reasons why a company  
20 would use more than one ad server. A lot of our  
21 customers own multiple media properties. So if you own  
22 many magazines or many newspapers, different magazines  
23 might use different ad servers. The second reason is to  
24 do specialized advertising.

25               For example, we have a lot of customers that

1 use DFP, but also use a company called FreeWheel for  
2 serving video advertisements, and other ones might use  
3 different ones for advertising on smartphones like the  
4 iPhone.

5 Q. Mr. Bellack, let's turn to Exhibit 2.

6 A. Okay.

7 Q. -- in your binder, please?

8 A. Yep.

9 Q. Have you seen this document before?

10 A. Yes, I have.

11 Q. You see at the middle of this document, it  
12 says complaint for patent infringement. And just above  
13 that, there is a list of companies.

14 A. Yes.

15 Q. Do you know whether some of these companies  
16 are customers of Google DoubleClick products?

17 A. Yes, I do.

18 Q. How do you know that?

19 A. That is part of my responsibility as a product  
20 manager is to know our customers.

21 Q. And do you know what DoubleClick product these  
22 customers use?

23 A. Yes, I do.

24 Q. How do you know that?

25 A. I need to know which product they are using so

1 when I meet with them, I understand the context of their  
2 requests.

3 Q. Can you please identify for the jury which of  
4 these companies listed on this complaint are customers  
5 and what product they use?

6 A. Yes. Advance Publications uses DFP. ALM  
7 Media Properties did use DFP, but, unfortunately, they  
8 are no longer a customer. Amazon.com uses DFP.  
9 American Media, Inc., uses DFP. Autotrader.com was  
10 using DE, the DoubleClick Enterprise product I was  
11 talking about. They are in the process of moving to  
12 DFP. Dell does not use our products. Demand Media uses  
13 DFP. Expedia is also a customer who was using DE and is  
14 in the process of using to DFP. Rodale uses DFP.  
15 Scripps Interactive uses DE. Viacom uses DFP. And  
16 Village Voice is not a customer.

17 Q. Mr. Bellack, when you refer to DFP, what does  
18 that mean?

19 A. Oh, I'm sorry. That's the DoubleClick for  
20 Publishers ad server. We use DFP and DE for short  
21 because the names are long.

22 Q. And just for clarity, what does DE refer to?

23 A. DoubleClick Enterprise.

24 Q. Thank you.

25 Are you familiar with how long these companies

1 have been customers?

2 A. I don't know all the dates exactly, but I know  
3 roughly how long.

4 Q. Tell us about that.

5 A. They've been pretty much all been customers  
6 for over five years, and some of them, like Auto Trader,  
7 Expedia, and Viacom have been customers back to at least  
8 2000/2001; some of them even the late '90s.

9 Q. Have you lost any of these customers because  
10 of this lawsuit?

11 A. Unfortunately, yes, we have.

12 Q. Which one?

13 A. ALM Media.

14 Q. I'd now like to ask you to take a look at  
15 what's been preadmitted as Exhibit 38.

16 A. All right.

17 Q. Do you recognize this document?

18 A. Yes, I do.

19 Q. What is it?

20 A. This is a contract from 2001 between  
21 DoubleClick and Auto Trader for the DE, DoubleClick  
22 Enterprise product.

23 Q. I'd like to ask you just a few more questions  
24 about DoubleClick's customers, specific customers.

25 Is NBC Universal a DoubleClick customer?

1 A. Yes, they are.

2 Q. And was NBC Universal a customer in 2007?

3 A. Yes, they were.

4 Q. Is Tribune Interactive a Google DoubleClick  
5 customer?

6 A. Yes, they are.

7 Q. And were they a customer in 2007?

8 A. Yes, they were.

9 Q. What about YouTube? Does YouTube use  
10 DoubleClick to display advertisements on its website?

11 A. Yes, they do.

12 Q. And was YouTube doing that in 2009?

13 A. Yes, they were.

14 Q. Are you familiar with whether YouTube displays  
15 advertising from its website through the use of just  
16 DoubleClick, or does it use other ad-serving technology?

17 A. They use both DoubleClick and some other  
18 internal Google ad-serving technologies.

19 Q. Now, I'd like to ask you some questions about  
20 how your customers use DoubleClick.

21 In the course of your work, have you learned  
22 how your customers use your products?

23 A. Yes, I have.

24 Q. And what is it that your customers use your  
25 products for?

1           A.     They use it for specifying where on their  
2 websites they would like ads to show up and to specify  
3 to whom they would like to try to show which ads.

4           Q.     Do all of your customers use DoubleClick in  
5 the way you've just described?

6           A.     Yes, they do.

7           Q.     And is that how Google intends DoubleClick's  
8 products to be used?

9           A.     Yes, it is.

10          Q.     Mr. Bellack, let's go back to that screen shot  
11 of Country Weekly.

12                 What is it that a customer like Country Weekly  
13 would do to make this ad appear on their website?

14          A.     They would do two things. The first, they  
15 would do is -- following our instructions, they would  
16 place a piece of code into the code of their webpage  
17 called an ad tag that specifies where they want the ad  
18 to show up and information about what kind of ad they  
19 would like to appear.

20                 They would then use the user interface tool of  
21 DFP to record that they had a contract to serve, in this  
22 case, an ad for an iTunes gift certificate, with  
23 information about whom they would like to show that ad  
24 to.

25          Q.     Let's take a look at the second slide. Can

1 you describe to the jury what -- what this slide shows?

2 A. Sure. This slide has most of the page grayed  
3 out to highlight the ad with the Brad Paisley album  
4 cover at the top. And what is at the bottom is the  
5 software tool that I mentioned that is actually showing  
6 part of the code that are the instructions that are  
7 causing your browser to display that page.

8 And what has been highlighted and enlarged is  
9 the DoubleClick ad tag.

10 Q. And when you say part of the code, what do you  
11 mean? What code?

12 A. So code -- the code is the set of instructions  
13 that the publisher sends to your computer's browser that  
14 tells your computer's browser how to display this  
15 webpage. So things like an image should go here; this  
16 is the text for the link to the article; or the text of  
17 the article itself, here's where to put the  
18 advertisement; here's what color the background should  
19 be; that sort of thing.

20 Q. And does this picture show all of the code  
21 for the website?

22 A. No, it doesn't. The code is very long, so  
23 this is just a snippet.

24 Q. And this code relates just to what?

25 A. The ad tag that is causing that top ad to show

1 up.

2 Q. And what -- what would the other code on the  
3 website relate to?

4 A. It would relate to displaying the content or  
5 the service that is shown on the webpage as well as  
6 instructions for other ads, if there are any.

7 Q. Can you describe for us what it is that this  
8 ad tag does?

9 A. Sure. This ad tag is telling your computer's  
10 browser to call DoubleClick to get an ad. That's the  
11 part that says ad.DoubleClick.net. That is an URL very  
12 much like if you typed www.google.com into your browser,  
13 except it's an instruction for your computer to do it.

14 And then as you go to the right, it is sort of  
15 the -- the instructions about where this ad should go  
16 and what kind of ad. So the section that says  
17 ami.cw.home is sort of saying what page this should go  
18 on. A-M-I is short for ALM Media, Incorporated, the  
19 owner of Country Weekly. C-W is Country Weekly. Home  
20 means on the homepage.

21 Then just to show a couple more, P-O-S means  
22 position in this case, and header means this is to show  
23 an ad in the header of the page at a location. And S-Z  
24 means size. And 728-by-90 are the dimensions of that  
25 ad. So it's saying what -- what size and shape of ad



1 it's looking for.

2 Q. And how important is an ad tag like this to  
3 the process of showing an ad on the website?

4 A. It is required. You can't show an ad without  
5 an ad tag.

6 Q. Do all of your web publishers show the same  
7 advertisement to every person who visits a particular  
8 website?

9 A. They actually do not. That is one of the big  
10 differences between online advertising and, say, print  
11 advertising. When Country Weekly publishes their  
12 magazine, they generally have to put the same ad on the  
13 back cover for everyone.

14 With online advertising, there is technology  
15 called targeting that lets the publisher share more  
16 information about who is looking at an ad and specify  
17 where a particular ad should be shown. So, for example,  
18 this ad could be targeted so that if someone is in  
19 Texas, they are seeing country music album covers. And  
20 if somebody is in -- I don't know -- to be goofy, if  
21 they're in Seattle, they see Glenn's music album covers.

22 Q. How does a publisher make that targeting you  
23 described work with DFP?

24 A. They -- they do two things. One part is that  
25 they share any information they have about the user and

1 what the user is interested in as part of the ad tag,  
2 and then in the user interface, they'll specify this  
3 particular ad should be shown in Texas, or should be  
4 shown to only to women or only to people of a certain  
5 income or interested in travel to a certain location or  
6 something like that.

7 Q. Are those all the ways that a publisher makes  
8 targeting work?

9 A. There are additional features that we offer  
10 that can target ads better that are specific to how DFP  
11 operates.

12 Q. I'd like to just keep focusing on the  
13 publishers.

14 A. Okay.

15 Q. Are -- beyond what you've described in terms  
16 of the information that's contained in the ad tag, are  
17 there other ways that -- that publishers achieve this  
18 targeting?

19 A. Oh, yeah. The way that publishers try to know  
20 their audience better is by putting little snippets of  
21 text -- basically strings and letters and numbers called  
22 cookies -- on people's browsers. And what that lets  
23 them do is remember when you're looking at the same site  
24 again and again that it's the same browser.

25 So if you've registered with a site, they

1 could store information and know, hey, this is -- this  
2 is Bob coming back or Judy coming back, so I know what  
3 gender the person is; or if they've told me something  
4 about where they live, I know that from registration.  
5 People can also -- publishers can also use that sort of  
6 technique to derive what someone is interested in. So  
7 if a browser is going to a lot of news articles about  
8 new cars, there's a reason to think that this computer  
9 browser would like to see more ads about cars, or if  
10 they are looking at a lot of articles about moving and  
11 mortgages, they might be interested in seeing real  
12 estate or mortgage ads.

13 Q. Is there a name for this string of text that  
14 you've just described?

15 A. Yes, there is. There is a fairly silly name  
16 for it. It is called a cookie.

17 Q. Based on your experience, are you aware of any  
18 DoubleClick customer that doesn't use these cookies  
19 you've described?

20 A. I am not.

21 MR. ROSEN: Objection. Objection. Lack  
22 of foundation.

23 THE COURT: You mean, in effect, you're  
24 calling for speculation?

25 MR. ROSEN: Yes.

1 THE COURT: I'll sustain as calling for  
2 speculation.

3 Q. (By Ms. Huber) Mr. Bellack, based on what you  
4 know about your customers and their use of DFP, are you  
5 aware of any customer that doesn't use these cookies  
6 that you've described?

7 MR. ROSEN: Objection, Your Honor. Same  
8 objection. Speculation and also this as phrased would  
9 call for hearsay.

10 THE COURT: Overruled. This is within  
11 his personal knowledge. He can answer the question.

12 A. In my personal knowledge, I do not know of any  
13 of our customers that do not use cookies.

14 Q. (By Ms. Huber) Beyond what you've just  
15 described about what a publisher might have to target,  
16 is there anything else that DoubleClick does to achieve  
17 this targeting?

18 A. Yes. We have our own DoubleClick cookie in  
19 the DFP product that we use to provide some additional  
20 ad-serving functionality.

21 Q. And how is it that the DoubleClick cookie  
22 works to target ads?

23 A. The DoubleClick cookie is something that we  
24 set on a computer whenever we serve an ad, and it is  
25 passed back to the DFP ad server every time there is a

1 request to serve an ad so that we can, for example,  
2 remember which ads were shown to a particular browser.

3 Q. What kind of information is contained in the  
4 DoubleClick cookie?

5 A. The DoubleClick cookie itself is only a unique  
6 identifier for that particular browser. So it is just a  
7 set of numbers and letters that only appear on that  
8 particular computer's browser.

9 Q. And you mentioned that it's a way to tell  
10 whether an ad has been served more than once. Is there  
11 a name for -- for that?

12 A. Yeah. An example of what we do with this  
13 DoubleClick cookie is something we call frequency  
14 capping, and that is a very long way to say don't show  
15 the same ad to the same person too many times. A lot of  
16 research has shown people don't like seeing the same ad  
17 again and again.

18 So what a frequency cap does is we keep a -- a  
19 store that is a record of how many times a particular  
20 browser has -- via their cookie has seen a certain ad.  
21 So if this Brad Paisley album cover ad was  
22 frequency-capped to three times a day, the first time we  
23 serve it, we say we've shown it once; then we've shown  
24 it twice.

25 Once we've shown it three times, if another

1 request came back to the ad server to get an ad for the  
2 homepage of Country Weekly, we would say, well, the  
3 frequency cap has been met for this ad; we need to pick  
4 a different ad to show that person.

5 Q. Based on what you know about how your  
6 customers use your products, how often is this frequency  
7 capping used?

8 A. Quite frequently.

9 Q. Does DoubleClick work the same without the  
10 DoubleClick cookie?

11 A. No, it does not.

12 Q. Can you describe that?

13 A. A lot of features stop working when the cookie  
14 is unavailable.

15 Q. Describe what Google tells its customers about  
16 the use of cookies?

17 A. We explain the importance of the DoubleClick  
18 cookie and that a lot of features don't work without it.  
19 And we have -- especially more recently, have been  
20 encouraging our publisher customers to have closer  
21 relationships with their users so they can do a better  
22 job of serving ads that their users are going to like.

23 Q. Now, I'd like to stay on the subject of how  
24 your customers use your products, but ask you about a  
25 different topic, which is the kind of advertisements

1 that your customers serve.

2 Have you ever heard of the term pop-up in  
3 connection with your work?

4 A. Yes, I have.

5 Q. What's a pop-up?

6 A. So a -- a pop-up ad is an online ad that  
7 instead of showing up in the same window as the content,  
8 shows up in an additional window that shows up on top of  
9 or next to the content.

10 Q. Do you know whether DoubleClick is used by  
11 your customers to serve pop-up ads?

12 A. It is sometimes. Yes.

13 Q. What does a customer need to do to serve a  
14 pop-up ad?

15 A. They need to make specific changes to how DFP  
16 is set up. They need to turn on the features for  
17 pop-ups. They need to add a special piece of code to  
18 their ad tag that says: This ad tag is eligible to  
19 serve a pop-up. And they have to set up the ads in DFP  
20 a little bit differently to enable them to be displayed  
21 as a pop-up when they are selected.

22 Q. Are you aware of any customer of yours that  
23 serves only pop-up ads through DoubleClick?

24 A. No, I'm not aware of any customer that does  
25 that.

1 Q. Do you know whether it's possible to use  
2 DoubleClick to serve only pop-up ads?

3 A. It might be theoretically possible, but since  
4 I've never heard of anyone doing it, I've never tried.

5 Q. Please describe whether DoubleClick is  
6 intended to be used for displaying pop-up ads. Excuse  
7 me. I'll rephrase that.

8 Can you describe whether DoubleClick is  
9 intended to be used for just displaying pop-up ads?

10 A. Definitely not.

11 Q. What does Google tell its customers about  
12 pop-ups?

13 A. We tell them to please not show pop-ups.

14 Q. And why is that?

15 A. Users hate pop-up ads. They're really  
16 annoying, and generally counterproductive.

17 Q. I'd now like to ask you some questions about  
18 how it is that your customers learn to use your  
19 products.

20 Are you familiar with whether Google teaches  
21 its customers to use DoubleClick?

22 A. Yes, I am.

23

24 Q. Can you describe for the jury how Google does  
25 that?



1           A.     Yes.   There are actually four things that we  
2 do, because these products are pretty complicated.   The  
3 first step in teaching our customers actually starts  
4 before they are even customers.

5                 Our salespeople are very trained on our  
6 products, and when they meet with a publisher, they try  
7 to understand a publisher's business and present ideas  
8 about how DFP could be used as a good solution to their  
9 advertising business or even suggest new ideas that the  
10 publisher has not -- not thought of before.   That is  
11 part of how we convince them we are a good partner and a  
12 good company to work with.

13                The second step is, once a publisher has  
14 decided to use DFP, we have employees who are technical  
15 experts on the product who will meet with the publishers  
16 a lot and often even go to the publisher's place of  
17 business to sit with their employees to help design the  
18 setup of DFP.

19                So in the case of something like the ad tags,  
20 our experts are usually helping design the ad tags and  
21 giving the publishers the first example ad tags that  
22 they can use on their site and modify as they grow.

23                The third way is through classroom training  
24 where we actually will have employees of the publisher  
25 come to a Google office or deliver training over the

1 Internet where we teach the people at the publisher who  
2 will be using the DFP tool all of the features and  
3 capabilities, such as how to target ads in the way I  
4 mentioned before.

5 And the fourth way is we provide a very large  
6 amount of written documentation and user manuals that  
7 describe all of the features of the product in detail,  
8 which the publisher can read and refer back to as they  
9 are learning how to use it.

10 Q. Focusing on these written materials that  
11 you've described, can you give us a little bit more  
12 flavor on what types of documents Google provides to its  
13 customers?

14 A. Sure. There are a lot of kinds, but in  
15 particular, we sometimes give very long guides that have  
16 a lot of material together. And we provide a lot of  
17 shorter pieces of content that are actually available  
18 online when you are using the tool, and we call that  
19 help content.

20 Q. Let's take a look at some of those.

21 Exhibit 115 --

22 A. Okay. Yes.

23 Q. -- do you recognize this document?

24 A. Yes, I do.

25 Q. Could you tell us what it is?

1           A.     This is a guide to teach people at the  
2 publisher who are responsible for setting up their web  
3 pages how to include DoubleClick ad tags in those pages.

4           Q.     What's the purpose of a guide like this?

5           A.     To help people at a publisher get the ads to  
6 show up where and how they want them to.

7           Q.     And does Google give this guide to DoubleClick  
8 customers?

9           A.     Yes, we do.

10          Q.     And since the jury is only looking at the  
11 screen, can you tell us about how many pages this  
12 document is?

13          A.     It's long. It's 108 pages.

14          Q.     Do you see the reference on the front cover to  
15 Webmaster?

16          A.     Yes.

17          Q.     What does Webmaster mean?

18          A.     It is a -- another silly word of my  
19 profession. It is actually a job responsibility. The  
20 Webmaster is the person at a publisher who is  
21 responsible for having the technical knowledge about how  
22 to build and display web pages.

23          Q.     What do you know about how Webmaster has used  
24 this guide?

25          A.     They use it as instruction and reference when

1 they are getting set up with DFP to make sure the ads  
2 will show up.

3 Q. Let's turn next to Exhibit 114.

4 A. All right.

5 Q. Do you recognize this document?

6 A. Yes, I do.

7 Q. What is it?

8 A. This is an administrator's guide for the  
9 DoubleClick Enterprise product.

10 Q. And is this another document that Google would  
11 give its customers?

12 A. Yes, it is.

13 Q. Why?

14 A. I mentioned earlier that DoubleClick  
15 Enterprise is installed software. That means there are  
16 a lot of extra steps the publisher has to take to get  
17 the software on their computers, get it up and running,  
18 and communicating properly.

19 The people at a company who do that would be  
20 called administrators or system administrators. And  
21 this guide gives them the information about how to get  
22 the software running.

23 Q. And about how long is this document?

24 A. Oh, this document is 95 pages.

25 Q. Let's turn next to Exhibit 49.

1 A. Okay.

2 Q. Do you recognize this one?

3 A. Yes, I do.

4 Q. What is it?

5 A. This is a page from the getting-started guide  
6 for DoubleClick for publishers.

7 Q. What's the getting-started guide?

8 A. This is some of the content we give to new  
9 publishers who are just beginning to use the product to  
10 understand how it works and how to use it.

11 Q. And, Mr. Bellack, when you refer to publisher,  
12 what do you mean by that word?

13 A. Those are the people who are customers of  
14 DoubleClick for Publisher, so people in the business of  
15 selling online advertising.

16 Q. And the -- the customers that you identified  
17 earlier, would those be a publisher?

18 A. Oh, yes. We refer to them all as publishers.

19 Q. Can you please tell the jury a little bit  
20 about what this document tells us?

21 A. Yes. This document is explaining what an ad  
22 tag is and how an ad tag leads to an advertisement being  
23 shown alongside the publisher's content or service.

24 Q. And do you see where it says ad tags are  
25 pieces of code?

1 A. Yes.

2 Q. What does code mean here?

3 A. Code here means the technical instructions  
4 that are transmitted to a user's browser to cause the ad  
5 to appear.

6 Q. And where does the code for the ad tag come  
7 from?

8 A. We provide the syntax, which is the acceptable  
9 format of the tag, and often samples that the publisher  
10 can then use on their site.

11 Q. When Google gives a customer a sample ad tag,  
12 what does it expect the customer to do with it?

13 A. We expect them to copy it and place it inside  
14 their web pages next to their content or service.

15 Q. Does Google teach its customers how to place  
16 the ad tag on a website?

17 A. We really don't have to, because the people at  
18 a publisher we are working with, part of their job  
19 responsibility is knowing how to make changes and  
20 additions to the code of a web page.

21 Q. Let's turn to the document, Exhibit 62.

22 A. Okay.

23 Q. What is this document?

24 A. This is another page from the getting-started  
25 guide for DFP.

1 Q. And what's described in this section of the  
2 getting-started guide?

3 A. This document has the syntax of the tag, which  
4 is the -- the instructions about what is allowed to be  
5 in them and how to build them. And actually, this  
6 document has sample tags at the end, as well as the  
7 syntax.

8 Q. Beyond providing these sample tags, does  
9 DoubleClick have any feature that actually helps its  
10 product -- excuse me -- helps its customers generate ad  
11 tags?

12 A. Yes. We actually have a feature of the DFP  
13 product that lets the publisher enter some information  
14 like this is an ad for the homepage of a certain size,  
15 and we automatically create the ad tag for the  
16 publisher.

17 Q. Please turn to Exhibit 44.

18 A. Okay.

19 Q. Do you recognize this document?

20 A. Yes, I do.

21 Q. What is it?

22 A. This is another page from the getting-started  
23 guide that explains how to use the tag generator feature  
24 that I was just referring to.

25 Q. And do you see at the very bottom -- we have

1 to go down -- the very bottom of the page where it says:  
2 Send the tag on your web developer who can paste the tag  
3 into the source code of the web page on which you want  
4 the ad slot?

5 A. Yes.

6 Q. What is Google telling its customers here?

7 A. We are telling the user of DFP to take the tag  
8 we have generated and give it to the person at their  
9 company who is responsible for updating the web pages.

10 Q. And the -- the reference in that sentence to  
11 the source code of the web page, what does that mean?

12 A. Those are the instructions that are sent to  
13 the user's browser to cause the web page to be  
14 displayed.

15 Q. Please turn to the document, Exhibit 43.

16 A. Okay.

17 Q. Do you recognize this document?

18 A. Yes, I do.

19 Q. What is it?

20 A. This is a guide that explains to a publisher  
21 how the DFP ad server takes information from the ad tag  
22 and goes about the process of picking the best ad to  
23 show to the particular user.

24 Q. And is this another document that Google gives  
25 to its customers?



1 A. Yes, it is.

2 Q. Describe what kind of instructions or guidance  
3 is contained in this document.

4 A. This document is educational. It is teaching  
5 the publisher how DFP goes about the process of  
6 understanding what kind of ad has been requested and  
7 picking the best ad to send back down to the user.

8 Q. I have just one more document from this  
9 getting-started guide, Exhibit 48.

10 A. Okay.

11 Q. Do you recognize this document?

12 A. Yes, I do.

13 Q. And what's described in this part of the  
14 getting-started guide?

15 A. These are the instructions to the users of DFP  
16 about how to add targeting to one of the ads.

17 So in that example, I was saying earlier, if  
18 the Brad Paisley album ad should only be shown to users  
19 in Texas, this is giving me instructions on how to  
20 specify that.

21 Q. Do you have an understanding as to how these  
22 instructions are used?

23 A. Yes.

24 Q. Please describe that.

25 A. These are used by employees of the publisher

1 who are responsible for entering these targeting rules  
2 accurately to understand how to operate our product in  
3 order to add the targeting.

4 Q. Now, beyond this initial training and written  
5 documentation that we've been discussing, does Google  
6 provide ongoing support to his customers?

7 A. Yes, we do.

8 Q. What kind of support?

9 A. We have hundreds of employees in the United  
10 States and around the world who are responsible for  
11 helping publishers with problems.

12 So publishers can contact us either through  
13 email or an online forum or even by phone and say: Here  
14 is what's not working right; will you please help me  
15 out?

16 Q. And what kinds of things do your customers  
17 tend to need help with?

18 A. They need help with a lot of things, but by  
19 far the most common problem is I cannot get this ad to  
20 show up correctly on my site; please help me figure out  
21 the problem.

22 Q. And what does Google do to help with that  
23 problem?

24 A. Just about anything we need to, because our  
25 customers expect us to solve these problems.

1           So we will look at the configuration of the  
2 ads inside our product and also very frequently, look at  
3 the source code of the web pages, like that example we  
4 showed, to see if there were any mistakes made or any  
5 changes in the ad tag that would cause it to work  
6 better.

7           Q.    Please turn to the document, Exhibit 57.

8           A.    Okay.

9           Q.    Are you familiar with this?

10          A.    Yes, I am.

11          Q.    What is it?

12          A.    This is a document that we prepared after  
13 Google purchased DoubleClick to explain how our ad  
14 servers work and how we talk to our customers about the  
15 products.

16          Q.    On the first page here, it says: Intro to  
17 DoubleClick's Publisher Platforms. What is a publisher  
18 platform?

19          A.    That's simply the term we use to refer to both  
20 DFP and DE together.

21          Q.    And DART for Publishers, what's that?

22          A.    That is the name of the previous version of  
23 DoubleClick for Publishers.

24          Q.    Let's turn to Page 934 in this document.

25          A.    Okay. All right.

1 Q. What's described here?

2 A. This is one of the slides we would show to  
3 customers to explain all of the kinds of services and  
4 support we provide.

5 Q. And can you describe to the jury some of the  
6 things that we see here?

7 A. Sure. I'll just do a few.

8 The first big bullet, scalable, 24/7 support  
9 infrastructure is explaining that you can get ahold of  
10 DoubleClick any time, day or night, to get help if you  
11 have a problem.

12 It sort of indicates that we had, at that  
13 time, 240 employees doing this, that we would respond  
14 within 30 minutes to a problem and that our statistics  
15 were showing that our customers liked what we did.

16 The second section about customer enablement,  
17 this is a lot about how we helped customers learn the  
18 product. So you can see the reference to classroom  
19 learning and training and the -- the different kinds of  
20 documentation.

21 And then the -- the third part is  
22 consulting resources, which I didn't talk as much about.  
23 This is the sort of times when we would give publishers  
24 advice about what to do.

25 These would be the cases like saying:

1 Please don't use pop-ups, and here's a new kind of  
2 advertising that we think would do well, or you've just  
3 purchased a whole bunch of new newspapers; here's some  
4 advice about how to integrate them into your operations  
5 and how to modify your ad tags to sell ads across all  
6 the new properties, that kind of thing.

7 Q. Mr. Bellack, I'd now like to focus on what are  
8 the ways you teach your customers to use -- your  
9 products have changed in any major ways over the years.  
10 You described earlier that you began working at  
11 DoubleClick in 2004?

12 A. Yes.

13 Q. And the products that we've been discussing  
14 today, have you been working on those products  
15 continuously since you began working for DoubleClick?

16 A. I started working on some features within DFP  
17 in 2004. I became responsible for the entire product in  
18 the beginning of 2005, and I took responsibility for DE  
19 in early 2007.

20 Q. During this time period, from 2004 or '5 when  
21 you began working on DFP, to the present, has  
22 DoubleClick and Google continuously taught and helped  
23 its customers how to use its products?

24 A. Yes, we have.

25 Q. And are the things that DoubleClick did to

1 teach its customers when you began working at the  
2 company the same kinds of things that Google does today?

3 A. Yes, they are.

4 MS. HUBER: I'll pass the witness.

5 THE COURT: Cross-examination by the  
6 Defendant.

7 MR. ROSEN: Thank you, Your Honor.

8 MR. RAMBIN: May I approach, Your Honor?

9 THE COURT: You may.

10 (Pause in proceedings.)

11 THE COURT: All right. Counsel, you may  
12 proceed.

13 MR. ROSEN: Thank you very much, Your  
14 Honor.

15 CROSS-EXAMINATION

16 BY MR. ROSEN:

17 Q. Good afternoon, Mr. Bellack.

18 A. Hello.

19 Q. Mr. Bellack, DoubleClick can be used to serve  
20 ads on any website?

21 A. Any website who was a customer of DoubleClick.

22 Q. So, in other words, so long as DoubleClick and  
23 the website can come to terms, some business  
24 arrangement, there is no website that cannot displayed  
25 ads served by DoubleClick, correct?

1 A. Yes.

2 Q. In your direct examination, you testified that  
3 DoubleClick is only used to display ads on websites; is  
4 that correct?

5 A. Yes.

6 Q. In fact, that's not correct. DoubleClick can  
7 be used to display ads on things other than websites,  
8 correct?

9 A. Yes.

10 Q. So when you testified in direct examination  
11 that DoubleClick can only be used to display ads on  
12 websites, that testimony was wrong?

13 A. I thought the question at the time was, is  
14 DoubleClick used for any other purpose with websites  
15 other than displaying ads. So I might have just been  
16 confused about the wording.

17 Q. So let's be clear about it then. DoubleClick  
18 can be used to serve ads on things other than websites?

19 A. Yes.

20 Q. For example, DoubleClick can serve ads on  
21 mobile applications?

22 A. Yes.

23 Q. DoubleClick can serve ads on digitally  
24 connected television?

25 A. Yes.

1 Q. DoubleClick can serve ads on video game  
2 consoles?

3 A. Yes, it can.

4 Q. DoubleClick can even serve ads on some of  
5 those gas stations that have video displays.  
6 DoubleClick can serve ads on video-displayed gas pumps,  
7 right?

8 A. Yes, it can.

9 Q. In fact, you don't even need a web browser in  
10 order for DoubleClick to be able to serve ads, right?

11 A. Yes, in those case -- some of those cases.

12 Q. DoubleClick can be used to serve ads on any  
13 device that is capable of connecting to the Internet and  
14 has the ability to send a request to DoubleClick. Those  
15 are the two requirements, right?

16 A. Yes.

17 Q. You've seen the -- the -- the patent in this  
18 case, correct?

19 A. No. I've only seen portions of it when I was  
20 being deposed.

21 Q. So this is the '702 patent, and it's  
22 Exhibit 501. We've already seen it today. And you can  
23 see that Claim 53, which is the -- the asserted claim  
24 here, is an apparatus for service on a communications  
25 network comprising, and then it lists various things.



1           And the first element is: A store for  
2 storing. Do you see that?

3           A. Yes.

4           Q. Okay. DoubleClick can be used to serve ads on  
5 a website that does not store information that's used to  
6 identify a user, correct?

7           A. Yes, sir.

8           Q. DoubleClick can be used to serve ads on a  
9 website that does not allow users to register on the  
10 website, correct?

11          A. Yes, sir.

12          Q. DoubleClick can be used to serve ads on  
13 websites that do not ask a user any information about  
14 themselves, correct?

15          A. Yes, sir.

16          Q. Even on those websites that do allow users to  
17 register, DoubleClick can be used to serve ads to users  
18 who visit the website but don't register.

19          A. Yes, sir.

20          Q. Is that a large -- for Google, is that a large  
21 population of users?

22                 In other words, isn't it true that most users  
23 of Google.com don't register?

24          A. I don't work on Google.com directly, so I  
25 don't know the statistics. I'm sorry.

1 Q. DoubleClick can be used to serve ads on  
2 websites that don't use cookies, correct?

3 A. Yes.

4 Q. When -- when -- for websites that do use  
5 cookies, when they -- those websites will transfer data  
6 to the user's device, correct?

7 A. Yes.

8 Q. And that's called setting the cookie, correct?

9 A. Yes.

10 Q. DoubleClick can be used to serve ads on  
11 websites that do not set cookies on a user's device,  
12 correct?

13 A. Yes, sir.

14 Q. And even on websites that do place a cookie,  
15 that do set a cookie on the user's device, DoubleClick  
16 can be used to serve ads to that user even if the user  
17 never returns that cookie, correct?

18 A. I'm sorry. Could you repeat the question?

19 Q. Sure. And maybe I should just explain this.

20 For those websites that do set a cookie on the  
21 user's device, when the user reconnects to that website  
22 or has another transmission with that website, the  
23 user's device will transmit that cookie back to the  
24 website, right?

25 A. Yes.

1 Q. Okay. So even if it's the case that the  
2 website set a cookie on the user's device --

3 A. Uh-huh.

4 Q. -- sometimes, for whatever reason, the user's  
5 device doesn't return the cookie, right?

6 A. Yes.

7 Q. Okay. In those instances where the user's  
8 device doesn't return the cookie, DoubleClick can still  
9 be used to serve ads, correct?

10 A. Yes.

11 Q. DoubleClick can be serve -- can be used to  
12 serve ads to users that have blocked cookies, correct?

13 A. Yes, sir.

14 Q. DoubleClick can be used to serve ads to users  
15 that have chosen to disable the cookie function on their  
16 websites, correct?

17 A. Yes, sir.

18 Q. Now, I want to talk to you about the  
19 ad-serving process, the process by which DFP serves ads.  
20 And before I do that, I want to show you another part of  
21 Claim 53 of the '702 patent, which is the claim that's  
22 being asserted in this case.

23 And -- and I want to focus on one of the  
24 elements, which we've -- I know you weren't here for the  
25 opening statement, but which we have identified as

1 Element (h).

2 And Element (h) is this element that says:

3 One or more programmatic elements for combining  
4 advertising-related information with service-related  
5 information to obtain a resulting combination that is in  
6 a format -- so we have -- stop there.

7 We have programmatic elements, which --  
8 computer software that combines advertising-related  
9 information with service-related information.

10 Do you understand that part of it?

11 A. I think I do. I'm not a patents expert.

12 Q. Okay. And then when that combination happens,  
13 there's going to be a resulting combination that's in a  
14 particular format, right?

15 A. Okay.

16 Q. And -- and you're familiar with, for example,  
17 HTML files, right?

18 A. Yes.

19 Q. And an HTML file is a -- is a computer  
20 document that combines advertising-related information  
21 with service-related information, correct?

22 A. Yes.

23 Q. And programmatic elements are used to create  
24 that HTML file, correct?

25 A. They can be, yes.

1 Q. And HTML files are transmitted to the user's  
2 device, right?

3 A. Yes.

4 Q. This ad tag that we've been talking about,  
5 that you were talking about in your direct examination,  
6 that ad tag is part of the HTML file that gets sent to  
7 the user's device, right?

8 A. Yes.

9 Q. So what happens is a user maybe goes to that  
10 Country Weekly website that you showed us, and a user  
11 wants to look at an article. So we'll type something  
12 into the bar up on top, and we'll go to the website,  
13 correct?

14 A. Yes.

15 Q. And when the user does that, that's called an  
16 HTTP get request, right?

17 A. Yes.

18 Q. And when the website gets this HTTP get  
19 request, it responds to that request, right?

20 A. Yes.

21 Q. And this HTML document that we talked about,  
22 that's the response to the HTTP get request, right?

23 A. Yes.

24 Q. And that -- that HTML file is in a format that  
25 is acceptable for being transmitted over a network,

1 right?

2 A. Yes.

3 Q. And that HTML file is in a format that is  
4 capable of being processed by the user's device --

5 A. Yes.

6 Q. -- correct?

7 A. Yes.

8 Q. And when we talk about an HTML file that has  
9 this combined service-related information with an ad  
10 tag, what's going to happen is the user's device is  
11 going to process that HTML document, and as a result of  
12 that processing, the user is going to see the web page,  
13 with the service the user requested and the ad served by  
14 DoubleClick, correct?

15 A. I'm not -- I'm not sure I'd agree with that  
16 specifically.

17 Q. Why?

18 A. I think the -- the user's device processes the  
19 HTML file, and the ad tag is an instruction to call DFP  
20 to get the ad.

21 Q. Okay. So let's follow -- let me follow up on  
22 that.

23 You'll agree with me that the process by which  
24 DoubleClick serves ad, the DFP ad-service process, that  
25 doesn't even begin until after the website has

1 transmitted this HTML code to the user's device,  
2 correct?

3 A. Most of the time, yes.

4 Q. All the time.

5 A. There are alternate setups for our products  
6 where the publisher's web server actually contacts the  
7 ad server directly to get the ad.

8 Q. All right. I'm talking about with DFP.

9 With DFP, all the time, the ad doesn't get  
10 served until the user's device processes the HTML code,  
11 correct?

12 A. Most of the time.

13 Q. Okay. It's generally the case. You'll agree  
14 with that?

15 A. Yeah. Generally, yes.

16 Q. All right. So now let's look at Exhibit 517.  
17 And I --

18 A. Okay.

19 Q. And this is a document we've looked at, and I  
20 believe it may have had a different exhibit number. And  
21 I apologize that I don't have, but I'll tell you, this  
22 is the identical document you looked at in your direct  
23 examination, correct?

24 A. Yes.

25 Q. And this document describes the functionality

1 of the -- of the DFP ad server, correct?

2 A. Yes.

3 Q. And it's an accurate description, right?

4 A. Yes, sir.

5 Q. And -- and, again, this document describes how  
6 the process starts when the user requests an ad; isn't  
7 that right?

8 A. Yes, sir.

9 Q. Overview of the ad-selection process. DFP's  
10 ad-selection process is designed to deliver the right ad  
11 to the right customer at the right time. Below is the  
12 process that DFP follows to select an ad to serve.

13 Do you see that?

14 A. Yes, sir.

15 Q. And the first thing that happens is the user  
16 requests ad, right?

17 A. Yes, sir.

18 Q. And if we look a little bit below in the  
19 document, it describes how it is that the user will go  
20 about requesting the ad, right?

21 A. Yes, sir.

22 Q. And the way that happens is the user's browser  
23 reads a web page that contains the DFP ad tags, and  
24 that's an accurate description, correct?

25 A. Yes, sir.



1 Q. And when Exhibit 517 talks about a user's  
2 browser reads a web page that contains the ad tags,  
3 that's referring generally to the HTML code, right?

4 A. Yes, sir.

5 Q. So before anything happens with regard to  
6 DoubleClick serving an ad, first, the user has to  
7 request a service from a website, right?

8 A. Yes, sir.

9 Q. Then the -- the website has to compile a  
10 response to that request, right?

11 A. Yes, sir.

12 Q. And as part of that process, the website  
13 combines advertising-related information with  
14 service-related information, correct?

15 A. Yes, sir.

16 Q. And the website uses computer-readable  
17 instructions and software to create that HTML response,  
18 right?

19 A. Yes, sir.

20 Q. And the website then transmits that combined  
21 HTML file to the user's device, right?

22 A. Yes, sir.

23 Q. And it's done so in a format that is capable  
24 of being processed by the user's device, right?

25 A. Yes, sir.

1 Q. And when that combined document is received by  
2 the user's device, the user's device will process that  
3 ad tag, right?

4 A. Yes, sir.

5 Q. And only when all that happens does  
6 DoubleClick serve an ad.

7 A. Yes, sir.

8 THE COURT: Counsel, approach the bench,  
9 please.

10 (Bench conference.)

11 THE COURT: Mr. Rosen, what do estimate  
12 the remaining cross will take?

13 MR. ROSEN: Probably a half hour or so.

14 THE COURT: Okay. Well, it's less than a  
15 quarter to 6:00. I think we'll break for the evening  
16 here. You can pick up in the morning, all right?

17 MR. ROSEN: Thank you.

18 (Bench conference concluded.)

19 THE COURT: Ladies and Gentlemen, this  
20 cross-examination looks like it's going to go for some  
21 additional period of time, and I'm not going to hold you  
22 any longer this evening. So we're going to recess for  
23 the evening at this time.

24 I'm going to ask you to take your juror  
25 notebooks and leave them on the table in the jury room

1 as you exit the courthouse.

2 Let me remind you that when you get home  
3 tonight, that will be the most tempting time for  
4 somebody to ask you about what you've been doing and to  
5 violate my instructions.

6 So I remind you again, don't discuss the  
7 case or anything about it with anyone else in any way,  
8 including yourselves.

9 And travel safely. Have a good evening.

10 If you'll be back in the jury room  
11 assembled by about 8:20, we'll try to start about 8:30  
12 in the morning.

13 Have a good evening. You are excused for  
14 the evening at this time.

15 COURT SECURITY OFFICER: All rise.

16 (Jury out.)

17 THE COURT: All right. Be seated,  
18 please.

19 Counsel, my practice is to be in chambers  
20 by 7:30 each morning of trial. If anything arises  
21 overnight, you'll have an opportunity to take it up with  
22 me before we begin with the jury at 8:30.

23 Again, have your renditions for the  
24 record ready to read in with regard to pre-admit  
25 exhibits used in today's portion of the trial.

1                   Is there anything else from the Plaintiff  
2 before we recess for the evening?

3                   MS. ANDERSON: No. Thank you, Your  
4 Honor.

5                   THE COURT: Mr. Adams, I assume you have  
6 something. You're popping up there.

7                   MR. ADAMS: Yes. I'm sorry, Your Honor.  
8 Your Honor, there -- there's a -- there's an issue in  
9 the case and there's a -- a way of proceeding that's --  
10 that's upsetting me, and here's what it is.

11                   This case has been about whether or not  
12 they can prove infringement; they can prove damages.  
13 From the very beginning, Your Honor, the theory of harm  
14 that they have expressed to us has been the theory of we  
15 have to pay attorneys' fees. That's all they disclosed  
16 in their discovery responses, the initial disclosures.  
17 Very late in the game, after all the discovery was done,  
18 they then switched horses and said: Well, we've got  
19 these indemnity letters.

20                   We filed a motion with Judge Payne, and  
21 we argued to the Judge: Look, this theory was disclosed  
22 to us well after discovery. Judge Payne allowed them to  
23 introduce these indemnity letters.

24                   Today during examination, they then  
25 attempted to raise another issue of harm, which I

1 approached Your Honor. I objected. Your Honor  
2 sustained the objection.

3 On direct examination with Mr. Bellack,  
4 another -- withdrawn.

5 In my cross-examination of Mr. Trinh, I  
6 got him to admit that they have not suffered any harm  
7 from these indemnity letters because there has not been  
8 any -- any customer that has ever left them because of  
9 this. They have paid no monies.

10 For the very first time, Your Honor,  
11 Mr. Bellack has come into this Court, and for the first  
12 time, testifies that a customer has nothing. They have  
13 never raised that, Your Honor. We've never heard that  
14 theory.

15 I -- I'm -- I'm concerned that we're  
16 being ambushed because they -- they -- they are  
17 desperate to try to show harm in this case, Your Honor.  
18 And for that, I -- I -- I apologize that Mr. --  
19 Mr. Rosen didn't get up in time to object. I think it  
20 was -- it just happened too quickly. He didn't object  
21 to it.

22 But I just wanted to raise that with the  
23 Court. I really believe that that testimony that came  
24 in should be stricken, because it's another theory of  
25 harm that has never been disclosed in this case, Your

1 Honor.

2 THE COURT: All right. Do you have a  
3 response for me, Ms. Anderson?

4 MS. ANDERSON: Yes. Thank you, Your  
5 Honor.

6 Your Honor, the question at issue that  
7 Counsel's referring to is the question of whether or not  
8 Google has lost customers who were sued as a result of  
9 the lawsuit.

10 That was a topic that was raised for the  
11 first time by Beneficial's counsel during  
12 cross-examination of Mr. Trinh, a witness who doesn't  
13 have knowledge. It wasn't something we proffered on  
14 direct in any way, shape, or form.

15 The witness was pressed several times to  
16 answer questions about it. He explained he's not the  
17 person that would necessarily know. He's not in that  
18 department of Google.

19 But the -- the questions have now left  
20 the jury with incorrect information because he is not a  
21 person who would have known that. We do know that, in  
22 fact, a Google customer has -- has indicated they've  
23 left because they were sued, and that made them quite  
24 unhappy.

25 We're not claiming damages for it, but --

1 but the questions that were elicited from a witness  
2 without knowledge and pressed as argument in this case  
3 left the jury with incorrect information.

4           We did not open that door, but it is  
5 something that was opened by Beneficial's counsel in  
6 examining on cross a witness, Mr. Trinh.

7           THE COURT: Well, if that's the first  
8 time it came up, Ms. Anderson, then why were we at the  
9 bench with Mr. Adams objecting, telling me that this was  
10 the first time this had been raised and you told me at  
11 the bench you could not tell me with certainty it had  
12 been previously disclosed?

13           MS. ANDERSON: That actually was a  
14 different issue, Your Honor. What we had been  
15 discussing at the bench was a question I had asked about  
16 how much time did our witness estimate that Google  
17 employees spent dealing with the lawsuit.

18           And that was the question at issue, and I  
19 was asked whether time spent by Google employees is  
20 something that had been disclosed. That was the  
21 discussion at sidebar. Had nothing to do with lost  
22 customers in any way at all, Your Honor.

23           And it -- the only reason that we  
24 corrected the record is because these were questions  
25 pressed on cross by Beneficial of Mr. Trinh.

1 THE COURT: Well, given what may be an  
2 untimely objection on the Defendant's part -- the Court  
3 takes seriously accusations of surprise and ambush --  
4 here's what I'm going to do: I'm going to direct each  
5 of you to file this evening with me a written statement  
6 of your positions, not more than two pages each, and I  
7 will read them overnight, and in the morning, we'll take  
8 this up before the jury comes in.

9 MS. ANDERSON: Thank you, Your Honor.

10 THE COURT: Is there anything else  
11 counsel is aware of we should take up tonight?

12 MR. ADAMS: No, Your Honor.

13 THE COURT: All right. We'll stand in  
14 recess until tomorrow morning.

15 COURT SECURITY OFFICER: All rise.

16 (Court adjourned.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/\_\_\_\_\_  
SHELLY HOLMES, CSR  
Official Court Reporter  
State of Texas No.: 7804  
Expiration Date 12/31/14

\_\_\_\_1/21/14\_\_\_\_\_  
Date

/s/\_\_\_\_\_  
SUSAN SIMMONS, CSR  
Official Court Reporter  
State of Texas No.: 267  
Expiration Date 12/31/14

\_\_\_\_1/21/14\_\_\_\_\_  
Date